109-106

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~325.~~ ~~E4~~ 15

SARAH B. HASKINS, APPELLANT,

vs.

THE SAINT LOUIS AND SOUTHEASTERN RAILWAY COMPANY (CONSOLIDATED), AND JAMES H. WILSON, RECEIVER OF SAID COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

FILED OCTOBER 13, 1879.

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INDEX.

	Original.	Print
Caption	1	1
Original bill	1	1
Answer to original bill	29	10
Bond of J. F. Alexander, receiver	30	11
Amended bill	33	12
Answer to amended bill	66	22
Bond of James H. Wilson, receiver	70	23
Petition of Sarah B. Haskins	73	25
Plea thereto	76	25
PROOF.		
Deposition of J. A. Remley	77	26
George Gory	90	30
Amanda Booth	99	32
William Connell	104	33
J. M. Johnson	113	36
S. M. Green	121	38
Lewis Cartwright	129	41
A. R. Johnson	138	44
D. M. Kelly	141	45
J. W. Roscoe	144	46
R. T. Looney	147	46
Josiah Freeman	149	47
Report of special commissioner	152	48
MINUTES.		
Decree appointing receiver, &c	155	49
Decree December 7, 1874	163	52
Decree November 1, 1878	165	53
Decree on petition of Sarah B. Haskins	185	60
Appeal bond	186	60
Certificate	188	61

OFFICE SUPREME COURT U. S.
FILED
SEP 27 1883
JAMES H. McKENNEY, Clerk.

SUPREME COURT OF THE UNITED STATES.

SARAH B. HASKINS, APPELLANT,

vs.

THE ST. LOUIS & SOUTHEASTERN R. R. CO. AND JAMES H. WILSON, RECEIVER.

At the October Term, 1882, the Court suggested that the record should contain the exceptions filed to the report of the Commissioner, allowing Mrs. Haskins $5,000.

That has been supplied upon a certiorari, and the case is ready for final hearing, so far as I know.

The Supreme Court of Tennessee has decided that in case of death, in an action like this, the damages to be recovered are such as the injured party could have recovered if, instead of being killed, he had been disabled for life.—*Railroad Co. vs. Smith*, 9 *Lea*, 474; *Railroad Co. vs. Toppins*, 10 *Lea*, 66–87.

F. E. WILLIAMS.
Attorney for Appelant.

1 MIDDLE DISTRICT OF TENNESSEE:

At a circuit court of the United States begun and held at the Federal court-room, in the city of Nashville, in and for the district aforesaid, on the 21st day of April, A. D. 1879, and of the Independence of the United States the 103rd year.

Present, the honorable John Baxter, United States circuit judge, presiding.

The following proceedings were had, to wit:

On October 24th, 1874, the original bill was filed, in the words and figures following, to wit:

In the circuit court of the United States for the middle district of Tennessee. In equity.

To the honorable the judges of the circuit court of the United States for the middle district of Tennessee, in the sixth circuit, sitting in equity:

Humbly complaining, show unto your honors your orators, Philo C. Calhoun and George Opdyke, trustees, as hereinafter mentioned, residents of New York City, in the State of New York, and citizens of the said State of New York, who bring this bill of complaint against the St. Louis and Southeastern Railway Company (Consolidated), a corporation created and existing under and by virtue of the laws of the State
2 of Tennessee, the Nashville, Chicago and Saint Louis Railroad Company, a corporation created and existing under and by virtue of the laws of the State of Tennessee.

And thereupon your orators complain and say that under and by virtue of an act of the legislature of the State of Illinois entitled "An act to incorporate the St. Louis and Southeastern Railway Company," passed March 10, 1869, there was created, in due form of law, a body politic and corporate, under the name of the St. Louis and Southeastern Railway Company, with all the powers, rights, privileges, franchises, and immunities mentioned in and granted by the said act and by the general laws of the State of Illinois.

Your orators further show unto your honors that the said St. Louis and Southeastern Railway Company, on or about the 10th day of March, 1869, and at other times prior to the date of the mortgage hereinafter mentioned, became possessed of the power, right, privilege, and franchise of constructing, maintaining, and using a railroad in the State of Illinois from East St. Louis, upon the Mississippi River, thence to Mount Vernon, thence to McLeansboro', thence to Equality,
3 and thence to Shawneetown, on the Ohio River, all in the said State of Illinois, with necessary sidings, and also branches not extending ten miles in length; and also the power, right, privilege, and franchise to make, execute, and issue bonds, secured by mortgage upon its property and franchises, and the right and franchise to consolidate with other railway or railroad companies within or without the State of Illinois.

And your orators further show unto your honors that the said company, after its organization, commenced the construction of its said railroad, and continued said work and put in operation the said railroad, as follows: Commencing from a point on the easterly bank of the Mississippi River, opposite to the city of St. Louis, and known as East St. Louis, in the State of Illinois, through the counties of St. Clair, Clinton, Washing-

ton, Jefferson, Hamilton, Saline, and Gallatin, in the said State of Illinois, to Shawneetown, upon the northerly bank of the Ohio River, being about one hundred & forty-two miles of road, and also a branch railroad, known as the O'Fallon branch, running from Belleville, in the said county of St. Clare, to O'Fallon, in the same county, and being about six miles in length.

And your orators further show unto your honors that by an act of the legislature of the State of Illinois entitled "An act to incor-
4 porate the Evansville and Southern Illinois Railroad Company," passed the 26th day of March, 1869, there was created, in due form of law, a body politic and corporate, under the name of the Evansville and Southern Illinois Railroad Company, with all the powers, rights, privileges, franchises, and immunities mentioned in and granted by the said act and by the general laws of the State of Illinois.

And your orators further show unto your honors that the said Evansville and Southern Illinois Railroad Company, on or about the 26th day of March, 1869, and at other times prior to the date of the mortgage hereinafter mentioned, became possessed of the power, right, privilege, and franchise of constructing, maintaining, and using a railroad in the State of Illinois, from the town of McLeansboro', Hamilton County, in the State of Illinois, through the towns of Enfield and Carmi, in White County, Illinois, to the dividing-line between the States of Indiana and Illinois, on the Big Wabash River; and also the power, right, privilege, and franchise to make, execute, and issue bonds, secured by mortgage upon its property and franchises, and the right and franchise to consolidate with other railway or railroad companies
5 within or without the State of Illinois.

And your orators further show unto your honors that the Congress of the United States by a joint resolution approved July 14, 1870, granted to the Evansville and Southern Illinois Railroad Company the right to construct a bridge for railroad purposes, and as a public highway, across the Big Wabash River.

And your orators further show unto your honors that the said company, after its organization, commenced the construction of its railroad, and continued said work and put in operation the said railroad, as follows: Commencing from a point in the town of McLeansboro', in the county of Hamilton and State of Illinois, and running through the towns of Enfield and Carmi, in White County, Illinois, to the dividing-line between the States of Indiana and Illinois, on the Big Wabash River, and constructed a bridge over the Big Wabash River.

And your orators further show unto your honors that the said St. Louis and Southeastern Railway Company and the said Evansville and Southern Illinois Railroad Company, so incorporated as aforesaid, acting under and by authority of their respective charters and the laws of the State of Illinois, did, on the 21st day of February, A. D. 1871, consolidate, amalgamate, and merge their said corporations into
6 one body corporate, called and named the St. Louis and Southeastern Railroad Company, the said body corporate succeeding to all the rights, privileges, immunities, advantages, franchises, easements, and choses in action of said companies.

And your orators further show unto your honors that under and pursuant to the laws of the State of Indiana, and especially under an act of the legislature of the State entitled "An act to provide for the incorporation of railroad companies," approved May 11th, 1852, and the acts amendatory thereof and supplemental thereto, a corporation was duly formed and incorporated, by a compliance with all the re-

quirements of said act, and by virtue of said act and said compliance became a body corporate under the name of the Evansville, Carmi and Paduca Railroad Company, for the purpose, among other things, of constructing and operating a railroad in the State of Indiana, through the counties of Vanderburgh and Posey, in the said State of Indiana, in the general direction of Carmi, in the State of Illinois, to a point on the bank of the Wabash River, which corporation was duly empowered under the laws of the State of Indiana, among other things, to consolidate with any other railroad constructed or in process of construction within the State of Indiana or in any adjoining State, upon such
7 terms as might be mutually agreed upon, thereby making one corporation of the two railroads so consolidated; and was also empowered to issue its bonds secured by mortgage upon its railroad, its property, and franchises.

And your orators further show unto your honors that the company, after its organization, commenced the construction of its said railroad, and continued said work and put in operation the said railroad, as follows: Commencing at a point on the Wabash River at the easterly end of the aforesaid bridge over the said river built by the Evansville and Southern Illinois Railroad Company, and running thence through the said counties of Vanderburgh and Posey to Evansville, on the Ohio River.

And your orators further show unto your honors that the aforesaid St. Louis and Southeastern Railroad Company, by virtue of the consolidation aforesaid, succeeded to the rights and franchises of the said Evansville and Southern Illinois Railroad Company, and the said St. Louis and Southeastern Railroad Company and possessed such rights and franchises as fully and completely as the said Evansville and Southern Illinois Railroad Company and the said St. Louis and Southeastern Railway Company had and possessed the same.

8 And your orators further show unto your honors that by an act of the general assembly of the commonwealth of Kentucky, approved Jan'y 27, 1867, there was created, in due form of law, a body politic and corporate under the name of the Evansville, Henderson and Nashville Railroad Company, with all rights, privileges, franchises, and immunities mentioned in and granted by the said act, and by the several acts of the legislature passed supplementary thereto and amendatory thereof, and by the general laws of the State of Kentucky, and especially by the acts passed by the said general assembly, and entitled as follows: "An act for the relief of the stockholders of the Evansville, Henderson and Nashville Railroad Company," approved April 19, 1873, "An act to grant and confirm unto the St. Louis and Southeastern Railway Company (Consolidated) the rights, powers, privileges, franchises, and immunities of the Henderson and Nashville Railroad Company and the St. Louis and Southeastern Railway Company (Kentucky Division)," approved Feb'u'y 3, 1874; and which acts your orators pray may be taken and received as part of this their bill of complaint.

And your orators further show unto your honors that the said Evansville, Henderson and Nashville Railroad Company, on or
9 about the 27th day of January, 1867, and at other times prior to the date of the mortgage hereinafter mentioned, became possessed of the power, right, privilege, and franchises of constructing a railroad from Henderson, on the Ohio River, to the line between the States of Kentucky and Tennessee, in the direction of Nashville, Tennessee, together with franchises, rights, and privileges mentioned in the aforesaid acts.

And your orators further show unto your honors that among the powers of the said Evansville, Henderson and Nashville Railroad Company, granted to it by the aforesaid acts, was the power to construct, use, and operate a railroad from Henderson southerly to the State line between Kentucky and Tennessee, to carry freights from Henderson to Evansville by steamboat, or by building an additional line of railroad, and bridging the Ohio River; and also the right to consolidate its company with other railroad companies owning lines of railroad connecting with it directly or by means of intervening lines, whether within or without the State of Kentucky; and also the power to make, issue, and sell bonds secured by mortgage upon its property and franchises.

And your orators further show unto your honors that the said
10 company, after its organization, commenced the construction of its said railroad, and continued said work and put in operation the said railroad, as follows: Commencing at a point on the Ohio River, at the City of Henderson, in the county of Henderson and State of Kentucky, and running through the counties of Webster, Hopkins, Todd, and Christian, in said State, to the dividing-line between the States of Kentucky and Tennessee, in the direction of Nashville, Tennessee.

And your orators further show unto your honors that by an act of the general assembly of the commonwealth of Kentucky, approved Feb'u'ry 17, 1870, there was created, in due form of law, a body politic and corporate under the name of the Madisonville and Shawneetown Straight Line Railroad Company, with all the rights, privileges, franchises, and immunities mentioned in and granted by the said act, and by the acts amendatory thereof, and by the general laws of the State of Kentucky.

And your orators further show unto your honors that by an act of the general assembly of the commonwealth of Kentucky, passed in February,
1872, the name of the Madisonville and Shawneetown Straight
11 Line Railroad Company was changed to the St. Louis and Southeastern Railway Company (Kentucky Division.)

And your orators further show unto your honors that the said St. Louis and Southeastern Railway Company (Kentucky Division,) on or about the 18th day of February, 1870, and at other times prior to the execution of the mortgage hereinafter mentioned, became possessed of the power, right, privilege, and franchises of constructing, maintaining, and using a railroad in the State of Kentucky, from Caseyville, and from the Ohio River, opposite Shawneetown, to Madisonville; and also the rights and franchises, by the consent of the holders of a majority and value of all the stock, to consolidate their company with any other railroad company, upon such terms as might be agreed upon; and also the power to make, issue, and sell bonds secured by mortgage upon its property and franchises.

And your orators further show unto your honors that the said company, after its organization, commenced the construction of its said railroad in the counties of Union and Webster, in the State of Kentucky.

And your orators further show unto your honors that under and in
pursuance of an act of the legislature of the State of Tennessee,
12 passed 13th February, 1852, there was created, in due form of law, a body politic and corporate under the name of the Edgefield and Kentucky Railroad Company, with all the powers, rights, privileges, franchises, and immunities mentioned in and granted by the

said act, and by acts amendatory thereof or supplemental thereto, and by the general laws of the State of Tennessee.

And your orators further show unto your honors that on the 13th day of February, 1852, and at other times prior to the execution of the mortgage hereinafter mentioned, the said Edgefield and Kentucky Railroad Company had authority to build a railway from some point on the northerly side of the Cumberland River, convenient to the city of Nashville, to the Kentucky State line, so as to unite with any Kentucky railroad company running to Henderson, and the power to make, issue, and sell bonds secured by mortgage upon its property and franchises; and by subsequent acts it was authorized to unite with other companies in bridging the Cumberland River, and to unite with the Louisville and Nashville Railroad Company in building a common track from Edgefield Junction to Nashville, and south of the Cumberland River, not over ten miles in length.

13 And your orators further show unto your honors that the said company, after its organization, commenced the construction of its said railroad, and continued said work and put in operation the said railroad, as follows: Commencing at a point in the city of Nashville, and running through the counties of Davidson and Robertson, in the State of Tennessee, to the Kentucky State line, at a point near Guthrie, in the State of Kentucky. And your orators further show unto your honors that the State of Tennessee, having advanced money to the said Edgefield and Kentucky Railroad Company under its general laws, taking a lien therefor upon the property and franchises of the said company, in the year 1871 foreclosed its lien, and obtained from the court of chancery of the State of Tennessee for the county of Davidson a decree of foreclosure and sale, made on the day of , 18 , under which decree there was had a sale of such property to the county of Davidson and others. That by the terms of the decree and of the laws of the State of Tennessee the purchaser, at the foreclosure sale, succeeded to all the franchises and rights of the Edgefield and Kentucky Railroad Company, and was authorized to

14 apply to the chancery court for the county of Davidson, Tennessee, for a decree making such substitution and granting such new powers as should be desired. That subsequently, by means of several mesne conveyances, Edward F. Winslow became the purchaser and owner of the aforesaid railroad; that an application having been made to the aforesaid court of chancery a decree of such court was duly made upon the 1st day of April, 1872, vesting all the franchises of the Edgefield and Kentucky Railroad Company, its stock and property, in the purchasers of the railroad, changing the name of the company to that of the Nashville, Chicago and St. Louis Railroad Company, and giving full power to merge and consolidate the road, property, and franchises of the company with those of any other company, whether within or without the State of Tennessee, with which it should be connected, directly or by means of intervening lines, on such terms and conditions as should be agreed upon by the consolidating companies; that on the 2nd day of September, 1872, a further decree was made by the said court of chancery confirming and extending the said powers, which decrees your orators pray may be taken as part of this bill of complaint. And your orators further show unto your honors

15 that the aforesaid St. Louis and Southeastern Railway Company of Illinois and Indiana, the aforesaid St. Louis and Southeastern Railway Company (Kentucky Division), the aforesaid Evansville, Henderson and Nashville Railroad Company, and the aforesaid Nashville,

Chicago and St. Louis Railroad Company, so incorporated as aforesaid, acting under and by authority of their respective charters and of the respective laws of the States of Illinois, Indiana, Kentucky, and Tennessee, did, on or about the 29th day of July, 1872, in due form of law, agree to consolidate and amalgamate and merge their said corporations into one body corporate, called and named the St. Louis and Southeastern Railway Company (Consolidated), the said body corporate to succeed to all the rights, privileges, immunities, advantages, franchises, easements, and choses in action of said companies.

And your orators further show unto your honors that on or about the 1st day of October, 1872, under and by virtue of the said agreement of consolidation duly entered into by and between the St. Louis and Southeastern Railway Company, a corporation created and existing under and by virtue of the laws of the State of Illinois and Indiana; the

16 Evansville, Henderson and Nashville Railroad Company, a corporation created and existing under and by virtue of the laws of the commonwealth of Kentucky; the St. Louis and Southeastern Railway Company (Kentucky Division), a corporation created and existing under and by virtue of the laws of the commonwealth of Kentucky; the Nashville, Chicago and St. Louis Railroad Company, a corporation created and existing under and by virtue of the laws of the State of Tennessee, there became lawfully created under and in pursuance of the statutes in such case made and provided a corporation, which is the corporation defendant herein, under the name of the St. Louis and Southeastern Railway Company (Consolidated), and that the said company from time to time became possessed of and now possesses all the powers, rights, privileges, franchises, and immunities mentioned in and granted by the legislatures of the States of Illinois, Indiana, and Tennessee, and by the general assembly of the commonwealth of Kentucky, respectively, by the sundry acts hereinbefore set forth, giving and granting to the several companies entering into the aforesaid agreement of consolidation respectively the powers, rights, privileges, franchises, and immunities hereinbefore more fully set forth and mentioned in the said acts respectively.

17 And your orators further show unto your honors that the said St. Louis and Southeastern Railway Company (Consolidated), or or about the 1st day of October, 1872, and at other times prior to the date of the mortgage hereinafter mentioned, and possessed and is now possessed of the power, right, privilege, and franchise (among others) of constructing, maintaining, operating, and using certain railroads in the States of Illinois, Indiana, Kentucky, and Tennessee, and especially of a certain railroad in the State of Tennessee, extending from the city of Nashville northerly to the State line between the States of Kentucky and Tennessee, all of which railroads are more particularly described in the mortgage or deed of trust hereinafter referred to, and that the said company has its office and principal place of transacting its business in the State of Tennessee, at Nashville, in the said State; and, as your orators are advised and believe, the said corporation is a citizen of the State of Tennessee within the meaning of the Constitution and laws of the United States relating to the jurisdiction of this honorable court.

And your orators further show unto your honors that the said cor-

18 poration, the St. Louis and Southeastern Railway Company (Consolidated), after its organization, became possessed of its railroads as aforesaid, and has operated and extended the same, and especially its railroad in the State of Tennessee, from the city of Nashville northerly to the State line between the States of Kentucky and Ten-

nessee, and as such corporation is now in possession of the same and in receipt of the rents, issues, and profits therefrom derived.

And your orators further show unto your honors that on or about the 1st day of October, eighteen hundred and seventy-two, the board of directors of said company, in pursuance of the power and authority in them by law vested, adopted resolutions to make its bonds as hereinafter mentioned, and to secure the same, by the trust deed or mortgage known as its first consolidated mortgage, to your orators.

And your orators further show unto your honors that afterwards the said St. Louis and Southeastern Railway Company (Consolidated) made its certain trust deed, dated October 1st, 1872, in the nature of a mortgage, between the said company, as party of the first part, and your orators, as parties of the second part, and which deed was duly sealed
19 with the corporate or common seal of the said company, and subscribed by the president and secretary of the said company, and duly acknowledged by the same, and delivered it unto your orators, a copy of which deed of trust or mortgage is hereto annexed and marked "Schedule A," and which mortgage your orators pray may be taken and received as a part of this their bill of complaint.

And your orators further show unto your honors that the said mortgage was duly recorded in the several counties of the States of Illinois, Indiana, Kentucky, and Tennessee, in which the property covered by said mortgage is situated, prior to the first day of November, 1872.

And your orators further show unto your honors that the said St. Louis and Southeastern Railway Company (Consolidated) made its several negotiable bonds in the form mentioned in the said trust deed or mortgage, and sealed the same with the common or corporate seal of the said company, and caused the names of its president and secretary to be thereto affixed, each of which bonds was for the payment of the principal sum of money therein mentioned, in United States gold coin,
20 at par, to the holder of the said bonds, thirty years from the date thereof, with interest thereon from date at the rate of seven per cent. per annum, payable semi-annually, in gold coin, as aforesaid, free of all United States Government tax on the 1st days of February and August, in each year, upon presentation of the respective coupons thereto annexed.

And your orators further show unto your honors that interest warrants or coupons for the payment of said interest at the times above mentioned were annexed to each of said bonds, and that the said bonds amounted in the aggregate to about nine millions five hundred thousand dollars ($9,500,000), of which about four millions five hundred thousand were placed in trust to exchange for prior liens.

And your orators further show unto you honors that all of said bonds which, by the provisions of the said bonds, were not to become valid or obligatory until authenticated by certificate endorsed thereon and duly signed by your orators as trustees, were afterwards, and on or about the date thereof, authenticated by a certificate endorsed thereon and duly signed by your orators as such trustees.

21 And your orators further show unto your honors that the said St. Louis and Southeastern Railway Company (Consolidated), at divers times, sold, issued, and delivered the said bonds, secured by the said mortgage or deed of trust, to a large number of individuals, partnership firms, and corporate bodies, who thereupon and thereby became the holders and bearers of the said bonds, and entitled to the moneys therein mentioned and agreed to be paid, and that the bonds so made, sold, issued, and delivered amounted in the aggregate to the sum of

about five millions of dollars of principal money, or thereabouts, and that they have come, by transfer and delivery, into the hands of a large number of persons, some of whom are unknown to your orators, and are too numerous to be made parties to this action.

And your orators further show unto your honors that, on the 1st day of February, 1874, the said St. Louis and Southeastern Railway Company (Consolidated) utterly failed and made default in the payment of the interest, interest warrants, or coupons which became due on that day, and that the said company has never paid the whole or any part of the said moneys, which, according to the tenor and effect of
22 the said bonds, and of the said interest warrants or coupons, should have been paid on that day, and ever since the first day of February, 1874, the amount of interest in arrear and unpaid on said bonds has been the sum of eighty thousand dollars and upwards.

And your orators further show unto your honors that the said Nashville, Chicago and Saint Louis Railroad Company have, or claim to have, some interest in or lien upon the mortgaged premises, or some portion thereof, which interest or lien, if any, has accrued subsequently to the lien of the aforesaid mortgage.

And your orators further show unto your honors that your orators claim that by the force and effect of the aforesaid mortgage or deed of trust, bearing date the first day of October, 1872, all of the property of the said defendant, the St. Louis and Southeastern Railway Company (Consolidated), described in the said mortgage is subject to the *lein* of said mortgage prior to the liens or claims of any of the other parties thereto.

And your orators further show unto your honors that no proceedings at law have been had, nor any suit or action commenced
23 by or on behalf of your orators, or any holder of any of the bonds of the said company secured by the mortgage aforesaid, for any interest unpaid or accrued thereon, except only this action.

In consideration whereof, and forasmuch as your orators are remediless in the premises at and by the strict rules of the common law, and are only relievable in a court of equity, where matters of this kind are properly cognizable and relievable—

Your orators therefore pray the aid of this honorable court, and that the said mortgage or deed of trust may be decreed to be a lien upon all the property, railroads, branches, extensions, and leased lines of the said St. Louis and Southeastern Railway Company (Consolidated), described in the said mortgage or deed of trust, within the jurisdiction of this honorable court, and that the St. Louis and Southeastern Railway Company (Consolidated) may be decreed to pay unto your orators and the other bondholders under aforesaid mortgage or deed of trust all arrears of interest now due, or that may hereafter become due and payable upon said bonds, together with all the costs and expenses in this behalf incurred and expended, and default thereof that the said
24 defendants above named, and all persons claiming under them or either of them may be forever barred and foreclosed of and from all equity of redemption and claim of, in, and to the said mortgaged premises, and every part and parcel thereof, and that all and singular the said mortgaged premises within the jurisdiction of the honorable court, with the appurtenances, property, and effects, rights, immunities, and franchises, in the said mortgage mentioned, may be sold under a decree of this honorable court, and that out of the money arising from the sale thereof, after deducting from the proceeds of any such sale just allowance for all disbursements and expenses of the said sale,

including attorney's and counsel fees, and other expenses, advances, or liabilities which may have been made or incurred by the said trustees in operating and maintaining the said railroad, or in managing its business while in possession, and all payments which may have been made by them for taxes or assessments on the said premises, or any part thereof, as well as compensation for their own services, to apply the said proceeds to the payment of the principal of such of the aforesaid bonds as may be at that time unpaid, whether or not the same shall have previously become due, and of the interest which shall
25 at that time have accrued on the said principal and accrued unpaid interest; and if, after satisfaction thereof, a surplus of the said proceeds shall remain, to pay over the same to the said St. Louis and Southeastern Railway Company (Consolidated), or to whomsoever may be lawfully or equitably entitled to receive the same, or as this court may direct.

And your orators further pray that an account may be taken of the bonds secured by the said mortgage to your orators, and of the amount due on said bonds for principal and interest, or either, and that the names of the lawful holders thereof may be ascertained, and that your orators, as trustees as aforesaid, may be let into the possession of the said railroad and its branches, and the income, tolls, and profits of the same, and also of the depots, and machine-shops, station-houses, and other real estate, and all rolling-stock, equipments, and appurtenances connected with or forming part of the said railroad and branches, and also all other property included in and conveyed by the said mortgage. And your orators further pray that a receiver may be appointed according to the course and practice of this court, with the usual
26 powers of receivers in like cases, of all the property, equitable interests, things in action, effects, money, receipts and earnings, rights, privileges, franchises, and immunities of the said railroad company, and of all other property included in and covered by the said mortgage within the jurisdiction of this honorable court.

And your orators further pray that a writ of injunction issue out of this and under the seal of this honorable court, or issued by one of your honors, according to the form of the statute in such cases made and provided, directing, commanding, enjoining, and restraining the said defendants, and each and every one of them, from interfering with, transferring, selling, or disposing of any of the property mentioned in and covered by the said mortgage, or from taking possession of, levying upon, or attempting to sell, either by judicial process or otherwise, any portion of the property embraced in or covered by the said mortgage; and that your orator may have such further or other relief in the premises as the nature of the circumstances of this case may require, and to this honorable court shall seem meet.

And may it please your honors to grant unto your orators a
27 writ of injunction issuing out of and under the seal of this honorable court, or issued by one of your honors, according to the form of the statute in such case made and provided, directing, commanding, enjoining, and restraining the said defendants, and each and every one of them, from interfering with, transferring, selling, or disposing of any of the property mentioned in or covered by the said mortgage, or from taking possession of, levying upon, or attempting to sell, either by judicial process or otherwise, any portion of the property embraced in or covered by the said mortgage; and may it please your honors to grant unto your orators a subpœna of the United States of America, issuing out of and under the seal of this honorable court,

directed to the St. Louis and Southeastern Railway Company (Consolidated); the Nashville, Chicago and Saint Louis Railroad Company, the defendants respectively, therein and thereby commanding them, on a certain day therein to be named, and under a certain penalty, to be and appear before this honorable court, then and there to answer all and singular the premises, and to stand to, perform, and abide by the said order, direction, and decree as may be made against them in the premises, as shall seem meet and agreeable to equity and good conscience.

28 And as to the several persons who are properly parties defendant to this bill of complaint, and who are not citizens of the State of Tennessee, and who may be out of the jurisdiction of this court, your orators pray that process may be issued to make them parties if they should come within such jurisdiction, or that such proceedings may be had in regard to such parties defendant according to the form of the statute in such case made and provided.

And your orators as in duty bound will ever pray, &c.

DEMOSS & MALONE,
Solicitors for Complainants.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

George Opdyke, being duly sworn, doth depose and say that he is one of the complainants in the foregoing bill named, and has read the same and knows the contents thereof, and that the said bill is true of his own knowledge, except as to those matters which are therein stated to be on his information and belief, and as to those he believes it to be true.

GEORGE OPDYKE.

Sworn to before me this 21st day of Oct., 1874.

R. A. PIPER,
Notary Public, N. Y.

29 On the 24th day of October, 1874, an answer was filed which is in the words and figures following, to wit:

PHILO C. CALHOUN AND GEORGE OPDYKE, trustees,
vs.
ST. LOUIS & SOUTHEASTERN RAILROAD COMPANY (Consolidated) and the Nashville, Chicago and St. Louis Railway Company.

The answer of the St. Louis and Southeastern Railway Company (Consolidated) and the Nashville, Chicago & St. Louis Railroad Company to the bill of complaint of Philo C. Calhoun and George Opdyke, trustees.

The said defendants come, by their president, Edward F. Winslow, and for answer to so much of the said bill of complaint as they are advised it is material for them to answer, say that it is true that they have made default in the payment of the interest due upon bonds issued by them as alleged in the said bill; and they further say that they are willing that this honorable court shall appoint its receiver in the premises to do and perform such acts as may be proper to protect

the interests of their creditors and as shall be ordered herein by the court.

EDWARD F. WINSLOW,
President of the Company Defendants.

W. L. GORDON,
Att'y for Defendants.

30 On the 29th day of October, 1874, the following bond was filed:

Know all men by these presents that we, Jediah F. Alexander, Andrew G. Henny, William S. Smith, Williamson Plant, Abraham McNeill, John S. Denny, and Andrew J. Gullick are held and firmly bound unto E. R. Campbell, clerk of the circuit court of the United States for the district of Middle Tennessee, and to his successors in office, in the sum of twenty thousand dollars lawful money well and truly to be paid to said clerk, or his successors in office, in trust, under the direction of said court in a certain suit in equity now pending the'in between Philo C. Calhoun and George Opdyke, trustees, plaintiffs, and The St. Louis and Southeastern Railway Company (Consolidated) and The Nashville, Chicago and St. Louis Railroad Company, defendants, for the payment whereof well and truly to be made we bind ourselves and heirs and representatives firmly by these presents. Sealed with our seals. Dated the 26th day of October, 1874.

Whereas the above-bounded Jediah F. Alexander has been appointed a receiver in said suit by an order of said court,
31 to take effect from the approval and filing of bond, and has accepted said office of receiver:

Now the condition of the above obligation is such that if the said Jediah F. Alexander shall well and truly and faithfully perform and fulfill all the duties of his office as such receiver as in said order required, and shall faithfully and truly account for and apply, under the direction of said court in said suit, all property, money, and effects which shall come to his hands or under his controle as such receiver without fraud or delay, then the above obligation to be void; otherwise to be and remain of force.

JEDIAH F. ALEXANDER.	[SEAL.]
ANDREW G. HENNY.	[SEAL.]
WILLIAM S. SMITH.	[SEAL.]
WILLIAMSON PLANT.	[SEAL.]
ABRAHAM McNEILL.	[SEAL.]
JOHN S. DENNY.	[SEAL.]
ANDREW J. GULLICK.	[SEAL.]

The foregoing bond is approved by me.

CONNALLY F. TRIGG,
U. S. District Judge.

32 I, Jediah F. Alexander, a receiver appointed in the above-mentioned suit by an order of court to take effect from the approval and filing of bond, do hereby accept said office of receiver, and I do solemnly swear that I will honestly, faithfully, and truly perform and fulfill all the duties of said office of receiver to the best of my ability.

JEDIAH F. ALEXANDER.

Sworn to before me this 28th Octo., 1874.

CONNALLY F. TRIGG,
U. S. District Judge.

33 On the 7th day of December, 1874, an amended bill was filed, which is in words and figures following, to wit:

In the circuit court of the United States for the middle district of Tennessee. In equity.

To the honorable the judges of the circuit court of the United States for the district of Tennessee, in the circuit, sitting in equity:

Humbly complaining, show unto your honors your orators Philo C. Calhoun and George Opdyke, trustees as hereinafter mentioned, residents of New York City, in the State of New York, and citizens of the said State of New York, who bring this amended bill of complaint against the St. Louis & Southeastern Railway Company (Consolidated), a corporation created and existing under and by virtue of the laws of the State of Tennessee, the Nashville, Chicago and Saint Louis Railroad Company, a corporation created and existing under and by virtue of the laws of the State of Tennessee, and Edward T. Winslow.

And thereupon your orators complain and say that under and by virtue of an act of the legislature of the State of Illinois, entitled
34 "An act to incorporate the St. Louis and Southeastern Railway Company," passed March 10, 1869, there was created in due form of law a body politic and corporate, under the name of the St. Louis and Southeastern Railway Company, with all the powers, rights, privileges, franchises, and immunities mentioned in and granted by the general laws of the State of Illinois.

Your orators further show unto your honors that the said St. Louis and Southeastern Railway Company, on or about the 10th day of March, 1869, and at other times prior to the date of the mortgage hereinafter mentioned, became possessed of the power, right, privilege, and franchise of constructing, maintaining, and using a railroad in the State of Illinois from East St. Louis, upon the Mississippi River, thence to Mount Vernon, thence to McLeansboro', thence to Equality, and thence to Shawneetown, on the Ohio River, all in the said State of Illinois, with necessary siding, and also branches not exceeding ten miles in length; and also the power, right, privilege, and franchise to make, execute, and issue bonds secured by mortgage upon its property and franchises, and the right and franchise to consolidate with other rail-
35 way or railroad companies within or without the State of Illinois.

And your orators further show unto your honors that the said company after its organization commenced the construction of its said railroad, and continued said work and put in operation the said railroad, as follows: Commencing from a point on the easterly bank of the Mississippi River opposite the city of St. Louis and known as East St. Louis, in the State of Illinois, through the counties of St. Clair, Clinton, Washington, Jefferson, Hamilton, Saline, and Gallatin, in the State of Illinois, to Shawneetown, upon the northerly bank of the Ohio River, being about one hundred and forty-two miles of road; and also a branch railroad known as the O'Fallon Branch, running from Belleville, in the said county of St. Clair to O'Fallon, in the same county, and being about six miles in length.

And your orators further show unto your honors that by an act of the legislature of the State of Illinois, entitled "An act to incorporate the Evansville and Southern Illinois Railroad Company," passed the 26th day of March, 1869, there was created in due form of law a body politic and corporate under the name of the Evansville and Southern

36 Illinois Railroad Company, with all the powers, rights, privileges, franchises, and immunities mentioned in and granted by the said act and by the general laws of the State of Illinois.

And your orators further show unto your honors that the said Evansville & Southern Illinois Railroad Company, on or about the 26th day of March, 1869, and at other times prior to the date of the mortgage hereinafter mentioned became possessed of the power, right, privilege, and franchise of constructing, maintaining, and using a railroad in the State of Illinois, from the town of McLeansboro', Hamilton County, in the State of Illinois, through the towns of Enfield and Carmi, in White County, Illinois, to the dividing line between the States of Indiana and Illinois on the Big Wabash River; and also the power, right, privilege, and franchise to make, execute, and issue bonds secured by other mortgage upon its property and franchises, and the right and franchise to consolidate with other railway or railroad companies within or without the State of Illinois.

And your orators further show unto your honors that the Congress of the United States, by a joint resolution approved July 14, 1870, granted to the Evansville and Southern Illinois Railway Company the right to construct a bridge for railroad purposes and as a public highway across the Big Wabash River.

37 And your orators further show unto your honors that the said company, after its organization, commenced the construction of its railroad, and continued said work and put in operation the said railroad, as follows: Commencing from a point in the town of McLeansboro', in the County of Hamilton, and State of Illinois, and running through the owns of Enfield and Carmi, in White county, Illinois, to the dividing line between the States of Indiana and Illinois, on the Big Wabash River, and construct a bridge over the Big Wabash River.

And your orators further show unto your honors that the said St. Louis and Southeastern Railway Company, and the Evansville and Southern Illinois Railroad Company, so incorporated as aforesaid, acting under and by authority of their respective charters and the laws of the State of Illinois, did, on the 21st day of February, A. D. 1871, consolidate, amalgamate, and merge their said corporations into one body

38 corporate called and named the St. Louis and Southeastern Railroad Company, the said body corporate succeeding to all the rights, privileges, immunities, advantages, franchises, easements, and choses in action of said companies.

And your orators further show unto your honors, that under and pursuant to the laws of the State of Indiana, and especially under an act of the legislature of the said State, entitled "An act to provide for the incorporation of railroad companies," approved May 11th, 1852, and the acts amendatory thereof and supplemental thereto, a corporation was duly formed and incorporated by a compliance with all the requirements of said act and by virtue of said act and said compliance became a body corporate under the name of the Evansville, Carmi and Paducah Railroad Company, for the purpose, among other things, of constructing and operating a railroad in the State of Indiana, through the counties of Vanderburgh and Posey, in the said State of Indiana, in the general direction of Carmi, in the state of Illinois, to a point on the bank of the Wabash River, which corporation was duly empowered under the

39 laws of the State of Indiana, among other things to consolidate with any other railroad constructed, or in process of construction, with the State of Indiana, or in any adjoining State, upon such terms as might be mutually agreed upon, thereby making one corporation of

the two railroads so consolidated, and was also empowered to issue its bonds, secured by mortgage on its railroad, its property, and franchises.

And your orators further show unto your honors, that the said company after its organization, commenced the construction of its said railroad and continued said work and put in operation the said railroad as follows: Commencing at a point upon the Wabash River at the easterly end of the aforesaid bridge over the said river, built by the Evansville & Southern Illinois Railroad Company, and running thence through the said counties of Vanderburgh and Posey to Evansville, on the Ohio River.

And your orators further show unto your honors that the aforesaid St. Louis and Southeastern Railroad Company, by virtue of the consolidation aforesaid, succeeded to the rights and franchises of the
40 said Evansville and Southern Illinois Railroad Company and the said St. Louis and Southeastern Railroad Company, and possessed such rights and franchises as fully and completely as the said Evansville and Southern Illinois Railroad Company and the said St. Louis and Southeastern Railway Company had and possessed the same.

And your orators further show unto your honors that the aforesaid St. Louis & Southeastern Railroad Company and the Evansville, Carmi and Paducah Railroad Company, acting under the authority of and in pursuance of their respective charters and the laws of the States of Illinois and Indiana, did, on the 28th day of February, A. D. 1871, consolidate, amalgamate, and merge their said corporations into one body corporate, called and named the St. Louis and Southeastern Railway Company, the said body corporate succeeding to and thereafter possessing all the rights, privileges, immunities, advantages, franchises, easements, and choses in action of said companies as fully as such corporations respectively had and possessed the same.

And your orators further show unto your honors that by an act
41 of the general assembly of the Commonwealth of Kentucky, approved Janu'y 27, 1867, there was created in due form of lawa body politic and corporate, under the name of the Evansville, Henderson and Nashville Railroad Company, with all the rights, privileges, franchises, and immunities mentioned in and granted by the said act, and by the several acts of the legislature passed supplementary thereto and amendatory thereof, and by the general laws of the State of Kentucky, and especially by the acts passed by the said general assembly and entitled as follows: "An act for the relief of the stockholders of the Evansville, Henderson and Nashville Railroad Company," approved April 19th, 1873; "An act to grant and confirm unto the St. Louis & Southeastern Railway Company (Consolidated) the rights, powers, privileges, franchises, and immunities of the Henderson & Nashville Railroad Company, the Evansville, Henderson and Nashville Railroad Company, and the St. Louis and Southeastern Railway Company (Kentucky Division)," approved February 3, 1874. And which acts your orators pray may be taken and received as part of this their bill of complaint.

And your orators further show unto your honors that the said
42 Evansville, Henderson and Nashville Railroad Company, on or about the 27th day of January, 1867, and at other times prior to date of the mortgage hereinafter mentioned, became possessed of the power, right, privilege, and franchise of constructing a railroad from Henderson, on the Ohio River, to the line between the States of Kentucky and Tennessee, in the direction of Nashville, Tennessee, together with franchises, rights, and privileges mentioned in the aforesaid acts.

And your orators further show unto your honors that among the

powers of the said Evansville, Henderson and Nashville Railroad Company, granted to it by the aforesaid acts, was the power to construct, use, and operate a railroad from Henderson southerly to the State line between Kentucky and Tennessee, to carry freights from Henderson to Evansville by steamboat, or by building an additional line of railroad and bridging the Ohio River, and also the right to consolidate its company with other railroad companies owning lines of railroad connecting with it, directly or by means of intervening lines, whether within or without the State of Kentucky, and also the power to make,
43 issue, and sell bonds, secur'd by mortgage, upon its property and franchises.

And your orators further show unto your honors that the said company, after its organization, commenced the construction of its said railroad, and continued said work and put in operation the said railroad as follows: Commencing at a point on the Ohio River at the city of Henderson, in the county of Henderson and State of Kentucky, and running through the counties of Webster, Hopkins, Todd, and Christian, in said State, to the dividing line between the States of Kentucky and Tennessee, in the direction of Nashville, Tennessee.

And your orators further show unto your honors that by an act of the general assembly of the commonwealth of Kentucky, approved February 18, 1870, there was created in due form of law a body politic and corporate, under the name of the Madisonville and Shawneetown Straight-Line Railroad Company, with all the rights, privileges, franchises, and immunities mentioned in and granted by the said act, and by the acts amendatory thereof and by the general laws of the State of Kentucky.

And your orators further show unto your honors that by an
44 act of the general assembly of the commonwealth of Kentucky, passed in February, 1872, the name of the Madisonville and Shawneetown Straight-Line Railroad Company was changed to the St. Louis and Southeastern Railway Company (Kentucky Division).

And your orators further show unto your honors that the said St. Louis & Southeastern Railway Company (Kentucky Division), on or about the 18th day of February, 1870, and at other times prior to the execution of the mortgage hereinafter mentioned, became possessed of the power, right, privilege, and franchise of constructing, maintaining, and using a railroad in the State of Kentucky from Caseyville, and from the Ohio River, opposite Shawneetown, to Madisonville; and also the right and franchise, by the consent of the holders of a majority and value of all the stock, to consolidate their company with any other railroad company, upon such terms as might be agreed upon, and also the power to make, issue, and sell bonds, secur'd by mortgage upon its property and franchises.

And your orators further show unto your honors that the said company, after its organization, commenced the construction of its said railroad in the counties of Union and Webster in the State of Kentucky.

45 And your orators further show unto your honors that under and in pursuance of an act of the legislature of the State of Tennessee, passed 13th Feb'u'y, 1852, there was created in due form of law a body politic and corporate under the name of the Edgefield and Kentucky Railroad Company, with all the powers, rights, privileges, franchises, and immunities mentioned in and granted by the said act and by acts amendatory thereof or supplemental thereto, and by the general laws of the State of Tennessee.

And your orators further show unto your honors that on the 13th

day of Febru'ry, 1852, and at other times prior to the execution of the mortgage hereinafter mentioned, the said Edgefield and Kentucky Railroad Comp'ny had authority to build a railway from some point on the northerly side of the Cumberland River convenient to the city of Nashville to the Kentucky State line, so as to unite with any Kentucky railroad company running to Henderson, and the power to make, issue, and sell bonds secured by mortgage upon its property and franchises, and by subsequent acts it was authorized to unite with other companies bridging the Cumberland River, and to unite with
46 the Louisville and Nashville Railroad Company in building a common track from Edgefield Junction to Nashville and south of the Cumberland River, not over ten miles in length.

And your orators further show unto your honors that the said company after its organization commenced the construction of its said railroad and continued said work, and put in operation the said railroad as follows: Commencing at a point in the city of Nashville and running through the counties of Davidson and Rutherford, in the State of Tennessee, to the Kentucky State line at a point near Guthrie, in the State of Kentucky.

And your orators further show unto your honors that the State of Tennessee, having advanced money to the said Edgefield and Kentucky Railroad Company under its general laws, taking a lien therefor upon the property and franchises of the said company, in the year 1871 foreclosed its lien and obtained from the court of chancery of the State of Tennessee for the county of Davidson a decree of foreclosure and sale made on the day of , 18 , under which decree there was a sale of such property to the county of Davidson and others. That by the terms of the decree and of the
47 laws of the State of Tennessee, the purchaser at the foreclosure sale succeeded to all the franchises and rights of the Edgefield and Kentucky Railroad Company, and was authorized to apply to the court of chancery for the county of Davidson, Tennessee, for a decree making such substitution and granting such new powers as should be desired. That subsequently, by means of several mesne conveyances, Edward T. Winslow became the purchaser and owner of the aforesaid railroad. That an application having been made to the aforesaid court of chancery, a decree of such court was duly made on the 1st day of April, 1872, vesting all the franchises of the Edgefield and Kentucky Railroad, its stock and property, in the purchasers of the railroad, changing the name of the company to that of the Nashville, Chicago and St. Louis Railroad Company, and giving full power to merge and consolidate the road, property, and franchises of the company, with those of any other company whether within or without the State of Tennessee, with which it should be connected directly or by means of intervening lines on such terms and conditions as should be agreed upon by the consolidating companies.

48 That on the 2nd day of September, 1872, a further decree was made by the said court of chancery confirming and extending the said powers, which decrees your orators pray may be taken as part of this bill of complaint. And your orators further show unto your honors that afterwards the said Nashville, Chicago and St. Louis Railroad Company made its certain trust deed, dated September 26, 1872, in the nature of a mortgage between the said company as party of the first part, and Edward F. Winslow as party of the second part, and which deed was duly sealed with the corporate or common seal of the said company, and subscribed by the president and secretary of the said

company, and duly acknowledged by the same, and delivered it unto said Edward F. Winslow, a copy of which deed of trust or mortgage is hereto annexed and marked Schedule A, and which mortgage your orators pray may be taken and received as a part of this, their bill of complaint. And your orators further show unto your honors that the said mortgage was duly recorded in the counties of Davidson and Robertson, in the State of Tennessee, in which the property covered
49 by said mortgage is situated.

And your orators further show unto your honors that the said Nashville, Chicago and St. Louis Railroad Company made its bond in the form mentioned in the said trust-deed or mortgage, and sealed the same with the common or corporate seal of the said company, and caused the name of its president and secretary to be thereto affixed, which bond was for the payment of the principal sum of money of one million eight thousand dollars in United States gold coin at par to the holder of the said bond, thirty years from the date thereof, with interest thereon from date, payable semi-annually in gold coin as aforesaid on the first days of January and July in each year.

And your orators further show unto your honors that the said Nashville, Chicago and St. Louis Railroad Company thereupon delivered the said bond, secured by the said mortgage or deed of trust, to the said Edward F. Winslow, who thereupon and thereby became the holder of the said bond and entitled to the moneys therein mentioned and agreed to be paid, and that the said Edward F. Winslow thereafter assigned and delivered the same to your orators as trustees
50 aforesaid, by an assignment in writing, a copy of which is hereunto annexed, marked Schedule B, and which your orators pray may be taken as a part of this bill of complaint.

And your orators further show that they hold the said bond and the deed of trust, securing the same as trustees for the holders of the bond hereinafter described as the consolidated mortgage bond of the St. Louis and Southeastern Railway Company (Consolidated.)

And your orators further show unto your honors that the aforesaid St. Louis & Southeastern Railway Company of Illinois and Indiana, the aforesaid St. Louis and Southeastern Railway Company (Kentucky Division), the aforesaid Evansville, Henderson & Nashville Railroad Company, and the aforesaid Nashville, Chicago and St. Louis Railroad Company, so incorporated as aforesaid, acting under and by authority of their respective charters and of the respective laws of the States of Illinois, Indiana, Kentucky, and Tennessee, did on or about the 29th day of July, 1872, in due form of law, agree to consolidate, amalgamate, and merge their said corporations into one body corporate,
51 called and named the St. Louis and Southeastern Railway Company (Consolidated), the said body corporate to succeed to all the rights, privileges, immunities, advantages, franchises, easements, and choses in action of said companies, and to assume all the liabilities thereof.

And your orators further show unto your honors that on or about the 1st day of October, 1872, under and by virtue of the said agreement of consolidation, duly entered into by and between the St. Louis and Southeastern Railway Company, a corporation created and existing under and by virtue of the laws of the States of Illinois and Indiana; the Evansville, Henderson and Nashville Railroad Company, a corporation created and existing under and by virtue of the laws of the commonwealth of Kentucky; the St. Louis and Southeastern Rail-

way Company (Kentucky Division), a corporation created and existing under and by virtue of the laws of the commonwealth of Kentucky; the Nashville, Chicago and St. Louis Railroad Company, a corporation created and existing under and by virtue of the laws of the State of Tennessee, there became lawfully created under and in pursuance of the
52 statutes in such case made and provided, a corporation which is the corporation defendant herein under the name of the St. Louis & Southeastern Railway Company (Consolidated), and that the said company from time to time became possessed of and now possesses all the powers, rights, privileges, franchises, and immunities mentioned in and granted by the legislatures of the States of Illinois, Indiana, and Tennessee, and by the general assembly of the commonwealth of Kentucky, respectively, by the sundry acts hereinbefore set forth giving and granting to the several companies entering into the aforesaid agreement of consolidation, respectively, the powers, rights, privileges, franchises, and immunities hereinbefore more fully set forth and mentioned in the said acts, respectively, and assumed all the liabilities and obligations of the said corporation.

And your orators further show unto your honors that the said St. Louis & Southeastern Railway Company (Consolidated), on or about the 1st day of October, 1872, and at other times prior to the date of the mortgage hereinafter mentioned, was possessed and is now possessed of the power, right, privilege, and franchise (among others)
53 of constructing, maintaining, operating, and using certain railroads in the States of Illinois, Indiana, Kentucky, and Tennessee, and especially of a certain railroad in the State of Tennessee extending from the city of Nashville northerly to the State line between the States of Kentucky and Tennessee; all of which railroads are more particularly described in the mortgage or deed of trust hereinafter referred to, and that the said company has its office and principal place of transacting its business in the State of Tennessee, at Nashville, in the said State; and as your orators are advised and believe, the said corporation is a citizen of the State of Tennessee within the meaning of the Constitution and laws of the United States relating to the jurisdiction of this honorable court.

And your orators further show unto your honors that the said corporations, the St. Louis and Southeastern Railway Company (Consolidated), after its organization, became possessed of its railroads as aforesaid, and has operated and extended the same, and especially its railroad in the State of Tennessee from the city of Nashville
54 northerly to the State line, between the States of Kentucky and Tennessee, and as such corporation is now in possession of the same, and in receipt of the rents, issues, and profits therefrom derived.

And your orators further show unto your honors that on or about the 1st day of October, 1872, the board of directors of said company, in pursuance of the power and authority in them by law vested, adopted resolutions to make its bonds, as hereinafter mentioned, and to secure the same by the trust-deed or mortgage, known as its first consolidated mortgage, to your orators.

And your orators further show unto your honors that afterwards the said St. Louis and Southeastern Railway Company (Consolidated) made its certain trust-deed, dated October 1st, 1872, in the nature of a mortgage between the said company as party of the first part and your orators as parties of the second part; and which deed was duly sealed with the common or corporate seal of the said company, and subscribed by the president & secretary of the said company, and duly acknowl-

edged by the same, and delivered it unto your orators, a copy of which deed of trust or mortgage is hereto annexed and marked Schedule C, and which mortgage your orators pray may be taken and received as a part of this their bill of complaint.

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And your orators further show unto your honors that the said mortgage was duly recorded in the several counties of the States of Illinois, Indiana, Kentucky, and Tennessee, in which the property covered by said mortgage is situated prior to the 1st day of November, 1872.

And your orators further show unto your honors that the said St. Louis & Southeastern Railway Company (Consolidated) made its several negotiable bonds in the form mentioned in the said trust-deed or mortgage, and sealed the same with the common or corporate seal of the said company, and caused the names of its president and secretary to be thereto affixed, each of which bonds was for the payment of the principal sum of money therein mentioned in United States gold coin at par to the holder of the said bonds thirty years from the date thereof, with interest thereon from date at the rate of seven per cent. per annum, payable semi-annually, in gold coin, as aforesaid, free of all United States Government tax, on the 1st days of February and August in each year, upon presentation of the respective coupons thereunto annexed.

56

And your orators further show unto your honors that interest warrants or coupons for the payment of said interest at the times above mentioned were annexed to each of said bonds, and the said bonds amounted in the aggregate to about nine millions five hundred thousand dollars ($9,500,000), of which about four millions five hundred thousand were placed in trust to exchange for prior *liens*.

And your orators further show unto your honors that all of said bonds which, by the provisions of the said bonds, were not to become valid or obligatory until authenticated by certificate endorsed thereon and duly signed by your orators as such trustees, were afterwards and on or about the date thereof authenticated by certificate endorsed thereon, and duly signed by your orators as such trustees.

And your orators further show unto your honors that the said St. Louis & Southeastern Railway Company (Consolidated) at divers times sold, issued, and delivered the said bonds, secured by said mortgage or deed of trust to a great number of individuals, partnership firms, and corporate bodies, who thereupon and thereby became the holders and bearers of the said bonds, and entitled to the moneys therein mentioned and agreed to be paid, and that the bonds so made, sold, issued, and delivered amounted in the aggregate to the sum of about five millions of dollars of principal money, or thereabouts, and that they had come by transfer and delivery into the hands of a large number of persons, some of whom are unknown to your orators, and are too numerous to be made parties to this action.

57

And your orators further show unto your honors that on the 1st day of January, 1874, the Nashville, Chicago and St. Louis Railroad Company, and the said St. Louis and Southeastern Railway Company (Consolidated) utterly failed and made default in the payment of the interest which became due on that day; and that the said company has never paid the whole or any part of the said moneys, which, according to the tenor and effect of the said bond, should have been paid on that day, and ever since the said first day of January, 1874, the amount of interest in arrear and unpaid in said bond has been the sum of thirty-five thousand dollars and upwards; and your orators further show unto your honors that on the first day of February, 1874,

58

the said St. Louis and Southeastern Railway Company (Consolidated) utterly failed and made default in the payment of the interest, interest warrants, or coupons, which became due on that day, and that the said company has never paid the whole or any part of the said moneys which, according to the tenor and effect of the said bond and of the said interest warrants, or coupons, should have been paid on that day, and ever since the said first day of February, 1874, the amount of interest in arrear and unpaid on said bonds has been the sum of eighty thousand dollars and upwards.

And your orators further show unto your honors that the said Nashville, Chicago and St. Louis Railroad Company and Edward F. Winslow have or claim to have some interest in or lien upon the mortgaged premises, or some portion thereof, which interest or lien, if any, has accrued subsequently to the lien of the said aforesaid mortgage. And your orators further show unto your honors that your orators
59 claim that by the force and effect of the aforesaid mortgages or deeds of trust bearing date the twenty-sixth day of September, 1872, and first day of October, 1872, all of the property of the said defendants, the St. Louis and Southeastern Railway Company (Consolidated), described in the said mortgage is subject to a lien of said mortgage prior to the liens or claims of any of the other parties hereto.

And your orators further show unto your honors that no proceedings at law have been had, nor any suit or action commenced by or on behalf of your orators or any holder of any of the bonds of the said company secured by the mortgage aforesaid, for any interest unpaid or accrued thereon except only this action. In consideration whereof and forasmuch as your orators are remediless in the premises at and by the strict rules of the common law, and are only relievable in a court of equity where matters of this kind are properly cognizable and relievable: Your orators therefore pray the aid of this honorable court, and that the said mortgages or deeds of trust may be decreed to be liens upon all the property, railroads, branches, extensions, and leased
60 lines of the *of the* said St. Louis and Southeastern Railway Company (Consolidated) described in the said mortgages or deeds of trusts within the jurisdiction of this honorable court; and that the said St. Louis and Southeastern Railway Company (Consolidated) may be decreed to pay unto your orators and the other bondholders under aforesaid mortgages or deeds of trust all arrears of interest now due or that may hereafter become due and payable upon said bonds, together with all the costs and expenses in this behalf incurred and expended. And in default thereof, that the said defendants above-named and all persons claiming under them, or either of them, may be forever barred and foreclosed of and from all equity of redemption and claim of, in, and to the said mortgaged premises and every part and parcel thereof, and that all and singular the said mortgaged premises within the jurisdiction of this honorable court, with the appurtenances, property, and effects, rights, immunities, and franchises in the said mortgages mentioned may be sold under a decree of this honorable court, and that out of the money arising from the sale thereof
61 after deducting from the proceeds of any such sale just allowances for all disbursements and expenses of the said sale, including attorney's and counsel's fees and all other expenses, advances, or liabilities which may have been made or incurred by the said trustees in operating and maintaining the said railroad or in managing its business while in possession, and all payments which may have been made by them for taxes or assessments on the said premises, or any part thereof,

as well as compensation for their own services, to apply the said proceeds to the payment of the principal of such of the aforesaid bonds as may be at that time unpaid, whether or not the same shall have previously become due, and of the interest which shall at that time have accrued on the said principal and be unpaid, without discrimination or preference, ratably to the aggregate amount of such unpaid principal and accrued and unpaid interest; and if, after satisfaction thereof, a surplus of the said proceeds shall remain, to pay over the same to the said St. Louis and Southeastern Railway Company (Consolidated), or to whomsoever may be lawfully or equitably entitled to receive the same, or as this court shall direct.

62 And your orators further pray that an account may be taken of the lands secured by said mortgages to your orators, and of the amount due on said bonds, for principal and interest, or either; and that the names of the lawful holders thereof may be ascertained.

And that your orators, as trustees as aforesaid, may be let into the possession of the said railroad and its branches, and the income, tolls, and profits of the same, and also of the depots, machine-shops, station-houses, and other real estate, and all rolling-stock, equipments, and appurtenances connected with or forming part of the said railroad and branches, and also all other property included in and covered by the said mortgage.

And your orators further pray that a receiver may be appointed according to the course and practice of this court, with the usual powers of receivers in like cases, of all the property, equitable interests, things in action, effects, money, receipts, and earnings, rights, privileges, franchises, and immunities of the said railroad company, and of all other property included in and covered by the said mortgages within

63 the jurisdiction of this honorable court.

And your orators further pray that a writ of injunction issue out of this and under the seal of this honorable court, or issued by one of your honors according to the form of the statute in such case made and provided, directing, commanding, enjoining, and restraining the said defendants, and each and every one of them, from interfering with, transferring, selling, or disposing of any of the property mentioned in and covered by the said mortgages, or from taking possession of, levying upon, or attempting to sell either by judicial process or otherwise, any portion of the property embraced in or covered by the said mortgage; and that your orator' may have such further or other relief in the premises as the nature of the circumstances of this case may require and to this honorable court shall seem meet; and may it please your honors to grant unto your orators a writ of injunction issuing out of and under the seal of this honorable court, or issued by one of your honors according to the form of the statutes in such case made and provided, directing, commanding, enjoining, and restraining the said defendants, and each and every one of them, from interfering with

64 transferring, selling, or disposing of any of the property mentioned in or covered by the said mortgage, or from taking possession of, levying upon, or attempting to sell, either by judicial process or otherwise, any portion of the property embraced in or covered by the said mortgages; and may it please you honors to grant unto your orators a subpœna of the United States of America issuing out of and under the seal of this honorable court, directed to the St. Louis & Southeastern Railway Company (Consolidated), the Nashville, Chicago and St. Louis Railroad Company, and Edward F. Winslow, the defendants respectively therein, and thereby commanding them on a certain day

therein to be named and under a certain penalty to be and appear before this honorable court, then and there to answer all and singular the premises, and to stand to, perform, and abide by the said order, direction, and decree as may be made against them in the premises as shall seem meet and agreeable to equity and conscience.

And as to the several persons who are property parties defendants to this bill of complaint and who are not citizens of the State of Tennessee, and who may be out of the jurisdiction of this court,
65 your orators pray that process may issue to make them parties if they should come within such jurisdiction, or that such proceedings may be had in regard to such parties defendant according to the form of the statute in such case made and provided. And your orators, as in duty bound, will ever pray, &c.

DEMASS & MALONE,
Solicitors for Complainants.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

George Opdyke, being duly sworn, doth depose and say that he is one of the complainants in the foregoing bill named, and has read the same and knows the contents thereof, and that the said bill is true of his own knowledge except as to those matters which are therein stated to be on his information and belief, and as to those he believes it to be true.

GEORGE OPDYKE.

Sworn to before me this 25th day of November, 1874.
[SEAL.] WM. J. HERON,
Notary Public, N. Y. City & Co.

66 On the 7th day of December, 1874, an answer to the amended bill was filed, which is in the words and figures following, to wit:

In the circuit court of the United States for the middle district of Tennessee.

PHILO C. CALHOUN AND GEORGE OPDYKE, trustees,
vs.
ST. LOUIS AND SOUTHEASTERN RAILWAY Company (Consolidated), Nashville, Chicago and St. Louis Railroad Company, and Edward F. Winslow.

The answer of the St. Louis and Southeastern Railway Company (Consolidated), the Nashville, Chicago and St. Louis Railroad Company, and Edward F. Winslow to the amended bill of complaint filed in the above-entitled action respectfully sets out that the said defendants, and every of them, as to so much of the amended bill of complaint as they are advised it is material for them to answer, do make answer as follows:

That they admit to be true the following averments in said amended bill of complaint contained, to wit: That on the 26th day of September,
67 1872, the said Nashville, Chicago and St. Louis Railroad Company made its certain trust-deed in the nature of a mortgage

unto Edward F. Winslow, which was duly sealed with its corporate seal, subscribed by its president and secretary, and by them duly acknowledged and delivered unto Edward F. Winslow; that the same was duly recorded in the counties of Davidson and Robertson, in the State of Tennessee. That the said Nashville, Chicago and St. Louis Railroad Company made its bond in the form mentioned in the said trust-deed or mortgage, and sealed the same with the common or corporate seal of the said company, and caused the names of its president and secretary to be hereto affixed, which bond was for the payment of the sum of one million eight thousand dollars in United States gold coin at par to the holder of said bond thirty years from the date, with interest thereon from date, payable semi-annually in gold coin as aforesaid on the 1st days of January and July in each year.

That the said Nashville, Chicago and St. Louis Railroad Company thereupon delivered the said bond, secured by the said mortgage
68 or deed of trust, to the said Edward F. Winslow, who thereupon became the holder of the said bond and entitled to the moneys therein mentioned and agreed to be paid, and that the said Edward F. Winslow thereafter assigned and delivered the same to the complainants herein as trustees aforesaid by an assignment in writing duly made, executed, and delivered, bearing date the 6th day of November, 1872, and that said complainants as trustees held the said bond and deed of trust, securing the same as trustees for the holders of the bonds in said amended bill described as the consolidated mortgage bonds of the St. Louis and Southeastern Railway Company (Consolidated).

And the said Edward F. Winslow for himself adopts the answer heretofore filed in this cause, and all admissions, averments, and consent therein contained, the same as if therein by him specially answered in his own behalf.

And the said defendants severally admit that there is still due to the State of Tennessee a large amount, to wit, over two hundred and fifty thousand dollars, payable in bonds of the said State, on account of purchase-money for the Edgefield and Kentucky Railroad, be-
69 ing the railroad of the said companies defendant in the State of Tennessee, for which said State retains a *lein* prior to all other incumbrances on said railway in Tennessee.

ST. LOUIS & SOUTHEASTERN
RAILWAY COMPANY (CONSOLIDATED),
By E. L. ABBETT, *Attorney.*
NASHVILLE, CHICAGO & ST. LOUIS
RAILROAD COMPANY,
By E. L. ABBETT, *Attorney.*
EDWARD F. WINSLOW,
By E. L. ABBETT, *Attorney.*

70 On the 15th day of September, 1876, a bond was filed, which is in the words and figures following, to wit:

Know all men by these presents that I, James H. Wilson, as principal, and Morriss K. Jessup, of New York City; Bluford Wilson, of Springfield, Illinois; Merritt L. Jones, of Shawneetown, Illinois; Joseph J. Castes, of Equality, Illinois; Broughton Temple, of Equality, Illinois, as sureties, are held and firmly bound unto the clerk of the United States circuit court for the middle district of Tennessee in the sum of twenty thousand dollars ($20,000.00), to be paid to said clerk, his successor in office or assigns, for which payment, well and truly to be made, we and each of us bind ourselves, jointly and severally, and our

respective heirs, executors, and administrators, firmly by these presents. Signed, sealed, and dated the eighth day of September, 1876.

The condition of the above obligation is such that whereas by an order of said court, made on the eighth day of September, 1876, in a cause therein pending, wherein Philo C. Calhoun and George Opdyke, trustees, are complainants, and the St. Louis and Southeastern
71 Railway Company and others are defendants, it was, among other things, ordered that the above-bounded James H. Wilson be appointed receiver of all the property, equitable interests, things in action, and effects of the defendant, and that he be vested with all the rights and powers of a receiver in chancery upon his filing a bond for the faithful performance of his duties in the penal sum of twenty thousand dollars ($20,000.00), and the approval thereof by said court:

Now, therefore, if the said James H. Wilson shall duly account for what shall come to his hands or controle as such receiver, and pay and apply the same from time to time as he may be directed by said court, and obey such orders as said court may make in relation to said trust, and in all respects faithfully discharge the duties of said trust, then the above obligation to be void; otherwise, in full force and effect.

JAMES H. WILSON. [SEAL.]
MORRIS K. JESSUP. [SEAL.]
BLUFORD WILSON. [SEAL.]
MERRITT L. JONES. [SEAL.]
JOSEPH J. CASTLES. [SEAL.]
BROUGHTON TEMPLE. [SEAL.]

Sealed and delivered in presence of—
D. A. LINDLEY,
D. A. LINDLEY.
H. W. GARDINER,
H. W. GARDINER.

72 Approved Sept. 15, 1876.

E. R. CAMPBELL, *Clerk*,
By J. W. CAMPBELL, *D. C.*

I, James H. Wilson, having been appointed receiver in the above cause, do hereby accept the said appointment. I do solemnly swear that I will faithfully perform and fulfill the duties of said office of receiver to the best of my ability.

JAMES H. WILSON.

Subscribed and sworn to before me, clerk of the circuit court of the United States in and for the southern district of Illinois.

Witness John A. Jones, clerk, and the seal of said circuit court at Springfield, in said district, this 8th day of September, in the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.] J. A. JONES, *Clerk.*

I, J. A. Jones, clerk of said circuit court, do hereby certify the foregoing to be a substantial and sufficient bond.

Witness my hand and seal of said court, at Springfield aforesaid, this 15th September, 1876.

[SEAL.] J. A. JONES, *Clerk.*

73 On May 23rd, 1879, a petition was filed as follows:

CALHOUN & OPDYKE, TRUSTEES,
vs.
ST. LOUIS & SOUTHEASTERN R'Y ET AL.

To the hon. judges of the circuit court of the United States for the middle district of Tennessee:

The petition of Sarah B. Haskins, in behalf of herself and infant child, Robert Haskins, shows your honors that on the day of , 1879, she filed in this court her petition praying for leave to bring in the State courts a suit against the receiver of the St. Louis & Southeastern Railway for damages sustained by her & her said child by reason of the death of her husband, I. K. Haskins, caused by the carelessness and negligence of the said receiver, his servants & agents. That petition was granted, and afterward, on the day of ,
74 1879, she brought in the circuit court of Davidson County, Tenn., her suit for said damages, which suit is still pending undecided. She now shows your honors that on the day of October, 1878, her said husband was in the employment of this receiver, who was then running trains of cars on the track of this railroad; that it was the duty of said receiver to have the road-bed, track, engines, cars, & bridges of said road so used by him in safe and suitable condition, as safe as care and skill could make them, & up to the standard of the art at that time; that he failed in these respects, & because of such failure, & without her husband's fault, he was killed in Davidson County, Tenn., on or about Oct. 10th, 1878; that one of the bridges on this road so used by said receiver in said Davidson County was built in an
75 improper and careless manner, & was so low that a man standing on the top of freight cars could not pass under that bridge without being struck by the bridge or by the overhead timbers thereof; that on the morning of the day aforesaid, while it was dark, the said Haskins was on the top of the car of the train so run by the receiver & was in the discharge of his duty & exercising proper care, & not knowing nor having the means of knowing that that bridge was being reached, nor that it was too low at the time he was injured for a man to pass under it safely while standing, was struck by the bridge or the overhead timbers thereof, & was so bruised & mangled thereby that he died in said county in October, 1878, after lingering some time in great mental & bodily pain. He left surviving him the petitioner, his widow, and said child Robert, the issue of their marriage, as his next of kin and heirs at law.

Now, understanding that this court has directed said suit
76 in the circuit court of the State to stop, & that the claim for said damages be presented here, and she comes & prays that she be paid for herself and child such damages as she may be entitled to, because of the loss she and her child have sustained by his death, as well as for the damage done to said deceased by reason of his mental & physical suffering & subsequent death, which damages she alleges to be twenty thousand dollars.

BATE & WILLIAMS,
Attorneys.

Plea.

The defendant comes and says that he is not guilty in manner & form charged and puts himself upon the country.

DE MOSS & MALONE,
Attorneys.

77 J. A. REMLEY, aged 44, residing at Edgefield Junction, Davidson County, Tennessee, testified as follows:

I am a telegraph operator at Edgefield Junction, in the employ of the St. Louis and Southeastern Railway Company and the Louisville and Nashville Railroad Company. I was agent of the roads for 13 years. I have been night operator for 15 or 16 months. I knew Conductor I. K. Haskins who was killed. I saw him October 10th, 1878, at 5.35 a. m., when I had a talk with him. He left his report
78 on the register together with his signature. That is the last time I saw him alive. He was going west from Nashville on train No. 8, engine 56, Gorey, engineer; arrived, 5.23; departed, 5.35. The train was a pretty long one that morning—a very heavy train. I heard the engineer whistling off brakes several times going up the grade, which extends all the way to Mr. Booth's, which is a mile or 1½ miles from the junction. I heard the engine slipping as it went up the grade, I hear them slipping every morning when the train is a heavy one. My attention was attracted to the matter by the engineer whistling off brakes, and I stood out on the platform. It was just beginning to turn day and a little bit foggy when the train left. The smoke from the engine was about as usual on a heavy train going up a grade A heavy train going up a grade emits a large volume of smoke. In going through a cut the smoke usually trails the engine, unless there is a wind to blow it away.

79 The next time I saw Haskins he was in the baggage-car of No. 1, coming south, dead, about 6.30 a. m. I got a telegram from headquarters of the St. Louis and Southeastern Railway Co. to go in and get his train-book and way-bills. The engineer came down after train-book and way-bills, following train No. 1, which arrived at 6.30 a. m. at the junction. I found the body of Haskins in the baggage car and took the book and way-bills out of his pocket and delivered them to the engineer, Gorey, to take back to Baker's Station, which is 7 or 8 miles from Edgefield Junction; Baker's was then the place of meeting for Nos. 1 and 8. After Haskins gave his report at the junction that morning he went to see if the switch was closed, then got in the caboose and left. That was the last I saw of him alive.

Mr. Haskins a man about 5 feet & eight inches high, about 30 or 35 years of age, weighed about 140 lbs., and was an active, healthy man, and a good railroadman. I don't know that he
80 was married and had a child only by reputation.

(The defendant objects to the last sentence given as evidence.)

I never saw him take a drink in my life. He was sober that morning.

A conductor's place is anywhere on the train. He has a right to go all over it to look after his men, the freight, &c. I have been a conductor myself. A conductor sometimes have brakesmen that can not be depended on, and it is his duty when brakes are called for to see that the brakes are set up or off, and if they are not properly manipulated to set them up or off himself. To do this he often has to go up on top of the cars in response to an alarm whistle, or whistle for on or off brakes. The grade there is about 50 or 60 feet to the mile. The grade is an ordinary one. Haskins had been on the road 6 or 8 weeks. Conductors receive from $75 to $90.00 a month.

I don't know how high the bridge at Johnston's is. That is the only overhead bridge between the junction and Baker's Station that
81 I know of. There have been several persons injured at Johnson's

Bridge, and one man killed before Haskins was killed (a brakesman) since I have been in the employ of the road.

(The above sentence is excepted to by att'y for def't as irrelevant).

The usual time for a heavy freight train to run from the junction to Johnson's Bridge is from 10 to 15 minutes. The schedule for freight trains is 12 miles an hour. The box-cars on the St. L. & S. T. R'y are about 12 feet high—the usual height of box-cars—and carry from twenty to twenty-four thousand pounds, and are 28 feet long.

Cross-examined:

Ques. 1. Was Haskins conductor of a freight train at the time of the accident?

Ans. Yes, sir.

Quest. 2. He had been conductor on the Southeastern road for some 6 or 8 weeks, and was about 30 or 35 years of age. Now, how long and what roads had he been conducting on?

82 He had worked on the L. and N. road for a year or two. He had run as a passenger conductor on the Memphis Branch for some time and had run the accommodation between Nashville and Bowling Green for some time.

Ques. 3. How far is Baker's Station from Edgefield Junction?

Ans. About seven miles.

Ques. 4. Was Haskins killed between these points?

Ans. I suppose so; he was brought back from Baker's Station dead, in about an hour after he left the junction on October 10th, 1878?

Ques. 5. Where is Johnson's Bridge?

Ans. About 1½ miles west of the junction, over a cut.

Ques. 6. Was the bridge put over the cut at the construction of the road?

Ans. I can't say. It was there in 1864 when I went to the junction. It leads over to Mr. Johnson's house, and enables him to get over to the pike.

Ques. 7. The road is the grade originally made when it was constructed, is it not?

83 Ans. Yes, sir, so far as I know. I should think it was.

Ques. 8. When you first saw the bridge, did it appear to have been built some years before?

Ans. Yes, sir. It was then a pretty old bridge. It has caught fire several times, and has been rebuilt partly. I suppose it was built when the railroad was built.

Ques. 9. Is it on a level with the adjoining land?

Ans. I think it is.

Ques. 10. Do you know where or how or under what circumstances Haskin's lost his life?

Ans. I do not.

Ques. 11. Did you examine him after his death or see any injury to him?

Ans. I can't say that I did. He was lying on his back in the baggage-car. There was blood on the way-bills and on his book which I got out of his pocket. His head was bloody.

Ques. 12. How deep and how long is the cut over which the bridge is?

Ans. I don't know.

Ques. 13. Then you don't know the height of the bridge over the cut?

84 Ans. No, sir, I do not.

Ques. 14. How far is it from the mouth of the cut, Nashville side, to the bridge?

Ans. I don't know exactly; about 40 or 50 yards.

Ques. 15. Does the ground from the mouth to the bridge rise gradually or abruptly?

Ans. Gradually.

Ques. 16. Could one on the train see over the top of the cut from the mouth to the bridge?

Ans. I can't say.

Ques. 17. The box-cars on this train were twelve feet high, were they not?

Ans. About 12 feet, I suppose. I have never measured them.

Ques. 18. That was the usual height?

Ans. Yes, sir.

Ques. 19. Then Haskins had frequently passed the bridge in passing over the road?

Ans. Yes, sir.

Ques. 20. The train that he was upon went at about six miles an hour?

Ans. The train going up the grade was moving 4, 5, or 6 miles an hour.

85 Ques. 21. Do you know at what speed the train was going when it passed the bridge?

Ans. No, sir, I do not; I have no idea.

Ques. 22. How long had it left the junction before you heard it at Baker's Station?

Ans. I did not hear it at all that morning.

Ques. 23. Were you ever a conductor on this or any other road? If so, how long?

Ans. I have never been a conductor on the L. & N. Was a conductor on the O. & M. for a few trips; was a brakesman for 3 years, and fired 17 months on the O. & M. R. R. Co.

Ques. 24. Did the train seem to be in good condition when it passed the junction on the morning of the accident?

Ans. Yes, sir; so far as I know.

Ques. 25. Was it emitting an unreasonable amount of smoke?

Ans. It was emitting an ordinary amount for a heavy train going upgrade. It was a heavy train.

Ques. 26. Was it dangerous to stand upon the top of the train when passing this bridge?

Ans. I suppose it was.

86 Ques. 27. Would a man of ordinary observation, standing on the top of the train and acquainted with the locality and in the exercise of ordinary care, have known the danger of passing the bridge that morning?

(Att'y for pl't'ff objects to the question.)

Ans. Certainly.

Ques. 28. You say the train left the junction about daybreak that morning?

Ans. Yes, sir; just about daybreak—5.35.

Ques. 29. Do you know how or by whom the train was manned, or the skill of those manning it?

Ans. Mr. Haskins was conductor—a good conductor. Mr. Gorey was engineer. I don't know the others on the train, nor the skill of them, nor how many.

Ques. 30. If Mr. Haskins was on top of the train when injured, do

you know whether or not it was necessary for him to be there, or under what circumstances he was there?

Ans. I do not. Mr. Haskins' business was anywhere on the train. I was not there, and don't know that he was on the top of the train, or if there, what brought him there.

87 Ques. 31. Was he on top of the train when he left the junction?

Ans. No, sir; he got in the caboose as he left the junction.

Ques. 32. When you say that Mr. Haskins' business was anywhere on the train, do you mean that this is the general duty of conductors, and that he has general control, superintendence, and supervision of the entire crew and train, with right to regulate speed and management of same?

Ans. Yes, sir.

Re-examination:

Ques. 1. Do you mean to say by your last answer that a conductor of a railroad train is not required by his duty to go out on the top of the train whenever an unusual signal is given or any other irregularity occurs?

Ans. He is required to do so. That is included in his duties. A conductor is responsible for his train, and must regulate speed and see that everything is operated in the right way.

88 Ques. 2. Does not a conductor's duty frequently call him on the top of the cars?

Ans. Yes, sir.

Ques. 3. If an engineer blows his whistle in an unusual *blows his whistle in an unusual* way going down or up grade, and calling for off-brakes, is it not his duty to go upon the top of the cars and see what is the matter?

Ans. Yes, sir.

Ques. 4. Was or not Haskins a man of ordinary observation, a careful, faithful, and vigilant railroader?

Ans. Yes, sir.

Ques. 5. Is it the duty of conductors of trains to stop and measure the height of overhead railroad bridges?

Ans. No, sir.

Ques. 6. Has not every conductor the right to presume that all overhead bridges are high enough for one to pass under, standing upright, with safety?

Ans. Of course they have a right to presume that.

89 Ques. 7. Did you ever know Mr. Haskins to be on the top of the train when it passed under that bridge?

Ans. No, sir.

Ques. 8. Could a man of ordinary observation when in the caboose or box-car on his train tell the height of an overhead bridge under which he passed?

No, sir; I should think not.

Ques. 9. Did you ever see him on the top of the train when in the employ of the St. L. & S. E. R'y Co., as it left the junction?

Ans. No, sir.

Would a man have known that the Johnson Bridge was dangerous to one standing up, if he had never gone under the bridge in an upright position on the top of the cars?

No, sir.

Was Haskins acquainted with the locality of that bridge, and did he know its height'?

I can't say.

J. A. REMLEY.

Subscribed & sworn to before me, May 26th, 1879.

LEWIS BAXTER,
Sp'l Com'r.

90 *Deposition of George Gory.*

Said GEO. GORY, being sworn, deposed as follows:

About the 10th day of October, 1878, my train passed the overhead bridge on the St. L. & S. E. R. R. between Baker's Station and Edgefield Junction. It was about twilight in the morning; between light and dark. I. K. Haskins was the conductor. He and I came out of the office in Edgefield Junction and I went to my engine & he went towards the caboose where the conductor of freight trains is in the habit of riding. As we pulled out from the junction and had got under headway about half way up the grade just before reaching that bridge I felt that the train pulled rather heavy, and thought that probably some brakes had been left on at the junction and whistled off-brakes. The
91 conductor bosses the train. When brakes are whistled off or on, it is the business generally of the brakesmen to attend to this, and see that the brakes are let off or put on; but frequently the conductor goes in person and attends to it & sees that the brakes are all right, & if the conductor does do it, he is not considered out of his line of duty. He frequently does that. His place is in the caboose or on top of the cars, or anywhere else on the train that he may see proper to be. He has to look after the whole train and he goes from place to place on it in the discharge of his duties. It was a cold morning & the smoke trailed back over the train. I saw nobody when I blew off-brakes. My engine was slipping & I was about to stall & I was working it very hard to get to the top of the grade before reaching the bridge. The top of the grade is some 200 or 300 yards south of that bridge, & from that top to the bridge is down grade. I blew off-brakes about a half mile this side; that is south of that bridge. I
92 don't know if I had looked back along the top of the train that I could have seen anybody on top of it, because of the smoke & the darkness. It is about six miles from that bridge to Baker's. We were about on time; maybe a little late, but I made the meeting point. I did not see Haskins after leaving the junction till we reached Baker's. Upon reaching Baker's the head brakesman, a negro man, came to me & said Mr. Haskins was killed. I thereupon went back to the car & got upon top of it & found Haskins lying on the running-board of the car with his head to the rear of the car & his feet towards the front of the train. He was lying rather on his side, partly on his stomach & one arm was slightly clinched under the running-board, as if, when he first fell, he had caught hold of it to prevent his rolling off. On examination we found on the back part of his head, near the ear, a
93 gash or cut near two inches long; it was a large cut. It had bled & the blood was oozing out then. His body was put in a train coming to Nashville & brought there. After his body was taken back it was found that he had in his pocket the bills of the train & I was ordered back to the junction to get the bills. I took my engine back to the junction & looked for his hat with the station agent & ope-

rator at Baker's whose name I have forgotten. I found his hat nearly under the bridge, or rather at the side of it.

The bridge is an overhead bridge over the railroad track for the public to travel over, as I understand it. I suppose this R. R. Co. built it, but I don't know it. It was a freight train with & coal-cars & 8 or 10 box-cars in the rear of the train, next to the caboose. The coal-cars & were next to the engine. My recollection is that Haskins' body was found dead on a car five or six from the caboose.

From the iron rail of the track to the top of a car is, I think, nearly 12 feet. Haskins was a sober, careful, steady man; that was
94 his character among railroadmen & he always so acted with me. He was sober that morning. He was about 5 feet 10 ten inches high, and weighed about 160 or 165 pounds.

I had been running on that road about three weeks, & Haskins had been on it about the same time. He had made one trip on it before I went on it. I did not then know anything about that bridge being too low for a man to stand up straight on top of the car & pass under it without being struck by the bridge, & had never heard of its being two low. But since that time I have heard a good deal about it; have heard of several men being struck there by that bridge. If Haskins knew anything about the bridge being too low, I don't know; nor never heard anything of it. I never heard him say anything about the bridge. A man on the engine or in the caboose or on a flat car cannot tell in passing under that bridge that it would
95 strike him if standing upright on the top of a car.

Haskins was about 30 years old, I think, & left a widow & a little son, Robert, about two or three years old. When I last saw Hasking, that morning at the junction, he was sound and well so far as I know or could see. I lived neighbor to him some time, & am personally well acquainted with his widow & little son. Conductors were getting then, I think, $75.00 to $90.00 per month.

Cross-examination:

There might have been a little fog; the smoke was trailing. I mean by trailing, that when the air is heavy that the smoke covers or falls over or descends on the train, or on the track when the train has passed. The trailing was more than medium on account of the atmosphere. I do not remember that I blowed the engine unusually
96 loud or longer. I blowed the whistle of the engine because of the public crossing; this crossing is about ½-mile of the junction. Between the crossing & the bridge I blew off-brakes. I remember of passing under a bridge overhead. I do not know what they call it. The bridge is over a cut. I do not know how deep the cut is. I blowed the whistle to let off breaks before getting to this bridge. The best I recollect is that was about *about* one-half mile off when I blowed. The distance from where I blowed, nearly to the bridge, is up-grade. I do not recollect that I blew unusually loud or long. The atmosphere affects the sound; when it is heavy the sound is deep & rumbling. I have observed this. When I was going up to the top of the grade, before getting to the bridge, I was moving at a rate of about 5 miles an hour. From the top of the grade to the bridge
97 is, I think, some 200 or 300 yards. The engine slipped nearly all of the way to the top of the grade.

If the brakes had been turned off it would not have stopped the slipping. I could not tell whether the brakes had been turned off in obe-

dience to my whistle. I remember as I approached the top of the grade the train pulled easier.

From the top of the grade to the bridge, I moved 6 or 8 miles per hour. Mr. Haskins was the conductor of my train. He had been on the road 25 or 30 days, more or less. Mr. Haskins had been my conductor, I think, twice before over this same point of the road. I don't remember ever seeing him on top of a southeastern train moving. The conductor's place on the train is anywhere on it. All men on the train are subject to his orders, the brakesmen especially. Somewhere about eighteen to twenty cars were with my engine. Three brakesmen were sufficient on a train like this on my road. I do not know how
98 many were on board, but I am certain there were two on this train. It is the brakesman's duty to put off or on the brakes. The conductor is not out of place if he does. The brakesmen I know of; one of them was front brakesman and the other was rear brakesman. The rear brakesman's place is near the rear end of the train. Mr. Haskins was near the end of the train, when he was found. I don't know anything about rear brakesman was it at that time. If the brakesman had been braking as rear brakesman his place would have been in the neighborhood where Mr. Haskins was found.

I do not know how Mr. Haskins was killed. He was wounded on the back of the head. The wound was two or three inches long; the flesh was cut. I do not know how high the bridge is, or what is the distance from the top of the car to the bridge.

GEO. GORY.

Sworn to & subscribed before me, May 26th, 1879.

LOUIS T. BAXTER, *Sp'l Com'r.*

99 *Deposition of Amanda Booth, witness for pl't'ff.*

I live between Edgefield Junction & Goodlettsville, in Davidson County, near the St. L. & S. E. Railway; am 53 years old; have been living there 20 years. My husband is John P. Booth. We live 200 or 300 yards from Johnson's bridge, a bridge crossing the St. L. & S. E. Railway. We live on the left-hand side going north & about 30 yards from the road. We live right on the rise, there being a down grade each way.

I recollect the whistling for brakes (off or on, I don't know which) the morning Mr. Haskins was killed. It was about daylight October 10th, 1878, as I remember, & the morning was foggy, the car smoking a great deal.

100 The whistling attracted my attention because I thought it might be that our stock was on the track. I went to the door & opened it & looked out. I saw a man come out of the caboose & walk down on the top of the cars. I said to my husband, "That man hasn't been on the road long. If he don't mind the bridge will take him down," and I watched him till the cut & smoke obscured him. The man on the top of the cars was turning the brakes. The man was not peart at his work, & that is the reason I thought the bridge would get him.

It is down grade there, & the brakes have to be turned quick in order that the brakesmen may get through his work before getting to the bridge. The man went at his work as if he didn't know the bridge was there. My reason for thinking so is, that he would have worked faster, if he had been appraised of the fact that the bridge was low, &
101 would knock him off if upon the top of the cars. There have been

others knocked off the cars at this bridge. That bridge has been there since the building of the road.

There is no other over-head bridge between Edgefield Junction & Baker's Station. This bridge is over a cut of the road at that place.

I learned that same day after 12 o'clock, that Mr. Haskins was killed. They sent him to Nashville that same day.

X-ex'n :

I live 30 yards from the road. That morning was foggy, & the smoke from the train was great. I could see about 100 yards that morning. That morning there was smoke between me and the car, but not enough to prevent me from seeing the cars until they were hidden by the cut. Sometimes the smoke settles over my house so that I can hardly see the railroad track. That morning, I could see the track 100 yards, that is, it was light enough for me to see 100 yards. The bridge is across the cut about the deepest part. I could not see the bridge that morning. From the place where I saw him turning the brakes to the
102 bridge, was about 50 yards, more or less. The train always calls for brakes at this point. That morning, they blowed unusually loud. It seemed as if there was something unusual the matter, from the manner in which they blew. This was about the place where they blow the whistle & call for brakes. They do that now. I don't know whether there was time to turn off the brakes & get out of the way or not, that morning. The man was not very active that morning, he seemed to be taking his time. The blowing of the whistle & the turning of the brakes were going on at the same time. After the man began to turn the brakes, the whistling for brakes slackened & the engine blowed for Goodlettsville.

There was only one man on the top of the cars that I saw. When I saw him the cars were just on the top of the rise. The train was a freight train. I don't know whether there were any flat cars or
103 not, in the train. There were box cars. The train was a long one. I believe the man came out of the caboose. The first brake set up was on one of the rear box cars. I don't know of my own knowledge how the man Haskins was killed. There may have been other men on the top of the cars, but I did not see but one.

AMANDA BOOTH.

Subscribed & sworn to before me, May 26, 1879.

LEWIS T. BAXTER,
Sp'l Com'r.

104 *Deposition of William Connell.*

Ques. 1. Do you reside near the line of the St. L. & S. E. R'y, & near the crossing of the over-head Johnson bridge in Davidson County; if yea, how long have you so resided there?

Ans. I do reside within one mile and a half of the said bridge, & have resided there since I was a little boy, & I am now 59 in July.

Ques. 2. Were you ever president of the Edgefield & Kentucky Railroad; if yea, how long were you president?

Ans. I was president of the road about 12 months.

Ques. 3. Are you well acquainted with the locality at and about this bridge?

Ans. I am.

4. You have known this place well then, since the construction of the road.

Ans. Yes, sir.

105 5. Have you recently examined the locality? If yea, give the result of the examination.

Ans. I examined it this morning. There was nothing by which I could detect any particular change in the track since it was first laid. I measured the track this morning at 4 points. The south end of the bridge western rail 16 ft. 8 inches from the top of the rail to the bottom edge of the sill of the bridge. The south rail on the east side 16 feet 9¼ inches. The north end of the bridge western rail 16 feet 7 inches, measured in the same way. Northeast rail 16 feet 9½ inches. Bridge 10 by 24 feet. The inequality is owing to a down grade & curve.

6. Then there is no material difference in the height of the rails at the bridge, if any, from the time of construction?

Ans. None that I know of.

7. Has this bridge always been considered a place that required care in passing with any one on top of the train, on account of its height?

Ans. Yes, sir.

106 8. Would a conductor of a train, ordinarily observant of his duty, have an opportunity of seeing and knowing the hazard of attempting to pass the bridge standing erect upon the train?

(Objected to by pl'tff's counsel as calling for the opinion of the witness who is not known to be an expert.)

Ans. I would suppose he would. It is evidently too low for a man to stand upon a box-car erect & pass under the bridge safely.

9. Is there a place on the caboose to sit down?

Ans. There may be; I know there is on some.

10. Could a man when sitting on the top of the train pass under the bridge safely?

Ans. I don't know; but I suppose they could; I think there would be room enough.

11. Has a conductor the control of a train?

Ans. Yes, in the main.

12. Has there been a bridge at this point (I mean where the Johnson bridge is), since the construction of the road? If yea, is the

107 bridge now, & was it on the 10th of October, 1878, as originally located & built?

Ans. Yes, sir; so far as I know, and I have lived near it all the while.

13. Was the bridge necessary for a crossing to enable Mr. Johnson to get out to the turnpike from his residence?

Ans. Yes, sir.

Cross-examined:

Ques. 1. When were you president of this road?

Ans. About 1870, I reckon.

2. Do you know the distance from the rail to any point of the sill of the bridge, at the time it was built?

Ans. No, sir.

3. How can you say there is no material change in the distance from the rail to the sill of the bridge now & when the bridge was first built?

Ans. I said so far as I could tell. I don't know, as a fact that there is no change or no difference in the distance now & then.

108 4. Why has this bridge been considered one that required care in passing under it?

Ans. Because several men were hurt there by that bridge before Haskins was killed. I saw one hurt there myself before Haskins was hurt, & know of several others. It was generally considered too low.

I was on the train when that man got hurt. I think he was a brakesman. That was since the war. I did not see Haskins hurt nor know that he was hurt there.

5. Then when you were president of this road you knew this bridge was too low?

Ans. It was regarded as being dangerous.

Ques. 6. Why?

Ans. Because some men were hurt there; were struck by the bridge; one of them I saw hurt there, & know of the others. I heard of a negro being killed by the bridge, but don't know that of my own knowledge.

109 7. Did you while president have any repairs made on that bridge or have it fixed, so that it would not strike persons passing under it on the trains?

Ans. I don't think I ever had any repairs made. I don't remember it if I did.

Quest. Don't you know that in repairing railroad tracks it is the custom to raise the bed & tracks & not to lower them?

Ans. I don't think they are either raised or lowered unless the track sinks.

Quest. Don't you know that a few years ago the bridge at this place was partly burnt & that that old bridge was removed & that this one was built, & that when this one was built it was high enough for a man to pass safely if standing erect on the top of a car?

Ans. I don't know anything about that.

Quest. Is not the conductor's place on the top of the cars or anywhere on the train that he sees proper to be or that he thinks his duty may require?

Ans. I think so.

110 Is it customary among railroads to have the bridges too low, that is, so low that it would be dangerous to the men whose duty required them to be on the top of the trains, or would such a bridge be an exception?

Ans. I would think such a bridge would be an exception. It ought to be. I don't know that I know the custom among railroads.

Ques. Is the majority of the bridges too low, & was it in Oct., 1878, or is the majority & was it then, so far as your experience and observation go, high enough for the employees to pass under them safely?

Ans. I don't know much about railroads. I don't know but I should think the majority of them are high enough for the employees to pass under them safely. They ought to be if they are not. I would not consider them properly built if too low to pass under.

Re-examined:

Quest. I understand you to say that you have heard of some persons being hurt at the bridge? How many did you hear were hurt?

111 Ans. I have heard of two or three persons being hurt. One of them saw after he was hurt. He was only slightly injured. I do not know the circumstances under which any of them were hurt.

Ques. 2. Do you know that Haskins lost his life or was injured by the bridge?

Ans. I do not.

Quest. 3. Did you ever see the train pass the bridge with any one on top?

Ans. I have not.

Ques. 4. Have you passed the bridge on the train frequently since the building of the road?

Ans. Yes.

5. How wide is the bridge?

Ans. It is ten wide & twenty feet long.

6. You said something about elevating or lowering the road. What did you mean?

Ans. I meant that it was the effort to keep the road at the same grade as when constructed, and when the rails or track would sink they would be raised to bring them back to their former position. No material or perceptible change has been made at this place, and the bridge rests upon pillars on either side of the cut & is just as it
112 was at the time it built. I know of no change. It could not sink far. The cut is through solid rock & the base of the pillars is solid rock.

7. If a party on the train should use ordinary care, could he pass through the cut and under the bridge safely?

Ans. He could not stand erect on the train & pass under the bridge safely, but if he would stoop or sit down and use ordinary care he could pass under safely.

WM. CONNELL.

Sworn to & subscribed before me May 27, '79.

LEWIS T. BAXTER, *Sp'l Com'r.*

113 J. M. JOHNSON, aged 45 years, occupation farmer, and residing at what is known as Johnson's Bridge, being sworn, deposed as follows:

Quest. 1. How far do you live from that bridge?

Ans. Within 30 or 40 steps from the bridge.

Quest. 2. Did you know I. K. Haskins, the conductor was said to be killed there last October?

A. No, sir.

3. Did you see anything connected with the accident resulting in his death?

Ans. I did not.

4. How long has that bridge been there?

Ans. About 21 years. It was put up by the railroad company to enable myself & neighbors to get to the pike. It is our only outlet, on account of a deep cut at that point made in building the road.

5. Has any one ever been injured at that bridge?

Yes; I know of two. I helped to take one man off the track
114 whose legs were cut off, and know from reputation of several others who were either killed or injured.

Ques. Did the railroad company know of these accidents?

Ans. They must have known of it. The man whose legs were cut off I carried off the track, & flagged the next train, and I told them that it was one of their men who had been knocked off the cars, and they (the railroad officers) carried him on the train to Goodlettsville.

Ques. Did these injuries you refer to occur before or after Mr. Haskins was killed?

Ans. It was killed.

Ques. Were you ever called upon to measure the height of that bridge from the iron rail on the track to the cross-pieces on which the bridge rests, and under which the trains pass?

Ans. I was.

Quest. By whom and when was you asked to measure it?

A. I was asked by Mr. Haskins, the brother of the deceased,
115 a short time after his brother was killed, probably in November last, 1878.

Ques. How did you measure it, and what did you ascertain?

Ans. I measured it from the iron rail the track to the bottom of the sill of the bridge, by placing or resting the end of a fishing-pole on the track & remarking the point where it reached the bottom sill, and then measured the pole, & found that the distance from the top of the rail to the bottom of the sill was sixteen feet and 9¼ inches.

Ques. Who assisted you?

Ans. My son, A. R. Johnson, assisted me. Mr. Haskins was also present.

Ques. Please describe the bridge & the cut there.

Ans. Well, it is a deep cut running along some 300 yards parallel to the Goodlettsville pike, & very near it, and so deep that myself & those living back of me could not get to the pike without the cut being bridged. The bridge is an ordinary wooden one; sills resting on abutments & floored with railing. The sills are large square timbers.

116 Ques. Has that bridge been repaired by the company since it was built, & if so, when & how?

Ans. It was repaired some 7 or 8 years ago. It was then raised some higher, but not high enough. I have since seen trains pass under it & seen the men on top double themselves up going under.

Ques. Has the bed of the road been lowered or elevated within the last four years, & since the bridge was made higher?

Ans. They have been in the habit of ballasting up the cross-ties whenever it needed it by putting in stone under the rail & not by clearing out down to the old bed, & thus have each time been elevating the road-bed, making the road-bed some 4 inches higher. I have never measured it.

Cross-examination:

The cross-ties were originally on a solid rock on that cut under this bridge, & I examined it last night after giving the foregoing tes-
117 timony, & I am satisfied that those cross-ties are now at least four inches from that solid rock, & hence the rails are that much higher from that solid rock than when the road was first built. I know that some 8 or 9 years ago one end or corner of that bridge was burnt, and then this r. r. co. remodeled or repaired it & made it some fourteen inches higher than it was before that time.

That was done by placing a sound sill on top of the abutment, on which the sills rested, that reached across the cut. This morning I called Esq. Connell's attention to the fact that the tracks of the road under that bridge had been raised several inches higher than when first built. I said to him that I was satisfied yesterday in saying four inches, & he said, "Yes, it is nearer a foot." Esq'r Connell testified this morning in this case.

Cross-examination:

The cut is called Johnson's Cut, & is about 300 yards long; I
118 never measured it; there is about 18 inches of rail at the top & rock at the bottom; in the cut the bottom is solid rock; mud or dirt can wash down in the cut from my field on the right-hand side going north; I have seen the r'y co. hands take dirt out of the cut; it has been a couple of years since they last cleaned it out, & it was four or five years before the last time that they cleaned it out; I have seen

rock put in the cut in between the ties; I don't remember of ever seeing them put in rock more than once or twice; it may have been a couple of years ago; I don't know how many rock they put in; the mud was taken from the ditches; I have seen the track overflowed after a hard rain; the track was first layed about 1858 or 1859; I do not know how high the bridge over the track was; it is now 16 feet 9¼ inches; the road has been raised, I think, 4 inches; it was raised by ballasting up the ties; I have seen them; I measured the height of the bridge a short time after Mr. Haskins was killed, & yester-
119 day morning the measurement was the same; I remembered that it was 16 feet 9¼ inches when I first measured it; the first time I measured it at the request of Mr. Haskins, broker of the deceased, & the other time I assisted Mr. Connell & Mr. Looney; I measured the first time with a fishing-pole from the top of the iron rail to the bottom edge of the sill; I measured the pole with an iron square; my son assisted me; my son was on the track; I was on the bridge and marked it; Mr. Haskins was present; the bridge was repaired 7 or 8 years ago by the r'y co.; the bridge was made higher; I was informed it was raised to prevent accidents; the builder told me at the time. At that time the r'y men said nothing about moving or changing the bridge; the roadmaster wanted to take it down after Haskins was killed; I objected because it was my outlet and it was contracted that there
120 should be a bridge there between my father & the company; I was about the bridge when repaired some 7 or 8 years ago; I never saw Bowers on the train; I can't say, but suppose a man could pass under the bridge standing on the cars; I have never noticed much about brakesmen passing under the bridge; I have noticed tall men tuck down their heads more than small ones; I do not know that it is necessary to tuck down the head; I did not know Haskins; he was killed last fall; I do not know that he was killed at the bridge; the sill that rests on the rock is 14 inches thick; this was put on the rocks where the old bridge timber used to rest; it was not long ago that I measured the white oak timber & found it 14 inches thick; I do not remember how I measured it; I think, with my hand.

Re-examined:

The roadmaster said he wanted to take that bridge down after
121 Haskins was killed because it was killing too many of their men; I supposed his reasoning to be that it killed the men because it was too low.

J. M. JOHNSON.

Subscribed & sworn to before me May, 27, '79.
LEWIS T. BAXTER, *Sp'l Com'r.*

S. M. GREEN, aged 33 years, occupation locomotive engineer, being sworn, testified as follows:

Ques. 1. I reside at Baker's Hill, 17 miles from Nashville, on the St. L. & S. E. R'y, and am in the employ of that road at that place, & have been in the employ of that company & their predecessor for nine years. I am running what is called the hill locomotive, to assist the train up the grade.

Ques. Are you acquainted with what is called the overhead bridge between Baker's Station and Edgefield Junction?

Ans. I am.

122 Ques. Is there any other overhead bridge between those places?

Ans. There is not.

Ques. Do you know the height of that bridge?

Ans. I never measured it, but it is low enough to strike a man's head standing on a box-car as it once did mine, when I was braking on the road some 6 or 7 years ago, knocking me senseless.

Ques. Are you acquainted with Conductor I. K. Haskins, who was said to have been killed there last October?

Ans. I was acquainted with him from the time he commenced running on that road until he was killed.

Ques. How long was that?

Ans. I don't think it was over a month at the outside.

Quest. Did you see the accident, or did you see Haskins after the accident?

Ans. I did not. I only saw some one lying on top of the car as they brought him to the station. I thought it was some one asleep.

123 When I got to the station I was told it was Haskins, and that they had transferred him to a passenger train & had carried him back to Nashville. Was also informed then & there that he was killed at Johnson's overhead bridge.

(Def't excepts to witness's information as to Haskins' death.)

Ques. What is the ordinary height of a box-car in use on that road?

Ans. I do not know. They are about the height of cars on other roads. I suppose about 12 feet high.

Ques. Have they a running-board on top or not, & what are its uses?

Ans. They have such boards for walking from brake to brake.

Ques. How much higher than the roof of the car is the board?

Ans. Some 5 or 6 inches higher than the eaves of the car, but only 2 or 3 inches higher than the center or cone of the car.

Ques. Where is the place of a conductor of a freight train during the running of the train?

Ans. I think anywhere on the train that his duties call him. On the engine, in the caboose, or on the top of the cars.

124 Ques. Should anything unusual occur, what should he do?

Ans. Go anywhere he may think necessary to ascertain the cause, and remedy the matter.

Cross-examined:

Ques. Then you don't know when, where, or under what circumstances Haskins lost his life?

Ans. No, sir; I could not say.

Ques. What is the height of bridge from bottom of cut?

Ans. I do not know.

Ques. What was the height of the freight train that he ran?

Ans. A box-car is, I suppose, 11 or 12 feet high.

Ques. 3. Did the bridge rest on the ground, or stone, or wood?

Ans. I don't know.

4. How long have you known it?

Ans. I first saw it about 15 years ago.

5. Did it seem to have been put there when the road was built?

Ans. Yes, I suppose it was, or pretty soon afterwards.

125 6. Was it necessary to get to Mr. Johnson's residence?

Ans. It was. It was put there for that purpose.

7. How long were you a brakesman on the road?

Ans. About 18 months.

8. Were you standing erect on the top of the car when you were stricken?

Ans. I was.

9. Had you often gone under the bridge unhurt?

Ans. Yes, sir. When I first began braking on the train the conductor told me that the bridge would strike me if I did not sit down. I was struck in the daytime; was only struck once.

10. Then you were not looking towards the bridge when stricken?

Ans. No, sir; I was struck on the back of the head.

11. If a man were on the top of the train & acquainted with the locality, & would use ordinary observation & ordinary care, would he not pass under the bridge safely?

Ans. A man is liable to forget. *I* man can't stand upright while going under the bridge, if on the top of the car, without being
126 struck. If he used ordinary observation & care he would lay down on top of the car, or get down a little lower than his ordinary height*h*, & then would not be struck.

12. Did you sit or stoop down when passing under the bridge?

Ans. I always did except the one time I was struck.

13. Then it would be carelessness to attempt to pass the bridge standing erect on the top of the train?

(The above question objected to by pl't'ff's att'y for soliciting the opinion of the witness.)

I think it would be carelessness if a man was looking at the bridge and knew it was going to strike him. If he did not see it or think of it I don't think it would have been carelessness.

14. If a party knew the locality, & that he could not pass the bridge standing erect, & should not look ahead when approaching it, would not this be carelessness?

(Question objected to by pl't'ff's att'y.)

Ans. I don't know whether it would have been carelessness or not. It might be forgetfulness.

127 15. You say the box-cars were 11 or 12 feet high. Do you mean that they were this height*h* from the top of the rail?

Ans. Yes, sir.

16. How high is the top of the rail from the ground?

Ans. Six to eight inches.

17. Were they box-cars that were in use on the train Haskins was running?

Ans. Yes, sir.

18. Did the train have a caboose on it, & had it a seat on top?

Ans. It had a caboose. I do not know whether it had a seat on it or not. Cabooses usually have seats.

19. If one were sitting on the seat of a caboose on top of a train, could he pass safely under the bridge?

Ans. If sitting upon the seat, he would be about as high as when sitting on an ordinary chair, & could pass under safely. When I was stricken I was standing erect, & the blow was on the back of the head.

20. When standing on the top of a box-car, how far can one of ordinary vision see the bridge when approaching from the Nashville side?

Ans. Three or four hundred yards, I suppose; and one mile from the other side.

128 Re-examination:

I suppose you could see that bridge about one hundred yards before you get to the top of the grade, this side?

I think the majority of bridges are, or were in October, 1878, high

enough for railroadmen on top of cars to pass under safely. They ought to be, if not. Such a bridge is, or was then, an exception, & not built right. The general rule in repairing a track is to raise it. I never saw it lowered. Then, if a road has been built a good many years, the repairing would naturally raise it higher than the original track.

Recross-examination:

Ques. 1. Do you know the track was raised higher at the bridge?
Ans. No, sir. I believe the cut is through solid rock.

S. M. GREEN.

Sworn to & subscribed before me, May 27, '79.

LEWIS T. BAXTER,
Sp'l Com'r.

129 *Deposition of Louis Cartwright.*

Said witness being sworn, deposed as follows:

Quest. 1. Were you on the train of the Southeastern Road when Conductor Haskins was in control?

Ans. Yes, sir. I was a brakesman.

2. How long did he conduct on the road?

Ans. Over one month.

3. Do you know what became of him?

Ans. In October, 1878, we were on the westward-bound train, & after leaving the junction, & about 150 yards before we reached Johnson's Bridge, I saw him go up on top of the train & then saw no more of him until we got to Baker's, where he was found dead on top of the train, & about midway the box-cars, perhaps a little nearer to the caboose than to the engine, lying on his face on the running-board, which is about in the centre of the top of the car, with his head towards Nashville. It was after daylight in the morning, when we left the junction. I do not know how he lost his life, but he had received
130 a blow on the back of his head.

4. Did any other accident happen on the train that morning or during that trip?

Ans. No, sir.

5. After you left the junction & till you arrived at Baker's was any alarm whistle sounded, or signal of distress given?

Ans. When we started from the junction the dews were heavy, & the track was slick, & the engine blew the whistle, which was a signal for some one to pass over the train & see if the brakes were on. I went over the train & the brakes were on and at their proper places, & the train moved on slowly, being heavily loaded, having some seven or eight loaded cars.

We were travelling some 8 or 9 miles an hour when we reached & passed the bridge. The whistle was sounded a time or two when going up the grade towards the bridge. The grade turns downwards about 150 yards before coming to the bridge. No more signals were given or whistles were sounded after reaching the top of the
131 grade on the Nashville side. The brakes were all in their proper places, & the train ran very smoothly. When I saw him last, he seemed turning around to go back to the caboose.

6. How often did this train pass this bridge?

Ans. Once every day.

7. Were you ever on top of the train when passing the bridge?

Ans. Yes, sir; frequently during the three or four years while I was on the road. I knew that I could not pass there safely standing erect, & I would stoop down. I went on the road some three or four years ago & have been there ever since. The bridge could be seen for about 200 yards from the Nashville side, & for about a like distance from the other side (upon which there is a curve), when on top of the train.

8. Was the height of the bridge changed during the time you ran on the road?

Ans. I noticed no change.

9. Did you continue at your place during the run?

Ans. Yes, sir.

132 10. Did the other brakesmen, and engineer & fireman?

A. Yes, sir; they were at their proper places.

11. Were the train and track in good condition?

Ans. Yes, sir. At least everything seemed right from the way the train ran.

12. How often did Mr. Haskins go on top of the train?

Ans. I don't know, but the conductors of this train were in the habit of going on top frequently; at least once a day.

Cross-examined:

Ques. How long had you been running on the train with Haskins?

Ans. About a week.

Did you pass over the train to your place when you started out from the junction that morning?

Ans. Yes, sir,

Did you pass over it any more after getting to your place until you reached Baker's?

Ans. No; I did not.

133 Now, after you passed over the top of the train to your place, how often did the engineer blow his whistle for brakes to be let off before you got to that bridge?

Ans. Two or three times, I know; may be more.

Why was he blowing for the brakes to be let off?

Ans. I reckon he thought the brakes were set; that is, were on so that they pressed the wheels, as we were going slowly & hard; and I suppose he thought if they were off the train would move more rapidly.

Ques. Then, as I understand you, after these whistles for brakes to be let off, Haskins went on top of the train to see if the brakes were off; is that what you mean?

Ans. I guess that is what he went on top for. I don't know it, but suppose it was for that.

Ques. How far is it from that junction to that bridge?

Ans. I suppose 1½ miles or 1¾ miles.

Ques. Do you know of anything else that Haskins could have
134 gone on top of the train for except to see if the brakes were off?

Ans. No, sir; and I don't know that he went up there for that.

Ques. But the engineer blew a whistle that you all understood to mean that he wanted brakes off, did he not?

Ans. Yes, sir.

Ques. Did you see any cut or gash on Haskin's head after he got to Baker's; if so, tell all about it?

Ans. I did not touch him; but right behind one of his ears it looked like a gash or a mash. There was lots of blood there.

Ques. Was there anything the matter with Haskins that you know of when you all started from the junction that morning?

Ans. No, sir.

Do you know or can you think of anything that could have caused Haskins' death except that bridge?

No, sir.

Ques. Then after the engine blew for off-brakes you did not pass over the train?

135 No, sir; I passed over the train to my place on leaving the junction, & not after the whistle for brakes to belet off.

Ques. How far did you & Haskins go on that road?

To Earlington, Ky. 102 miles.

Ques. How many overhead bridges are there on that road from Nashville to Earlington?

Ans. Five or six.

Ques. How many of them are too low to allow you to stand upright on the box-car & pass under safely?

Ans. I never heard of any but this one near Baker's.

Ques. How many persons have been hurt at this bridge by its being too low?

Ans. I don't know exactly; I know of two or three. One was named Atkins; Mr. Green, who testified yesterday, & another man whose name I don't know; & then Mr. Haskins, if he was hit by it.

Q. How often did your train pass that bridge near Baker's?

Ans. Once a day.

Q. How often did Haskins get on top of the train?

Ans. I don't know; perhaps several times.

136 Q. Was the top of the train a proper place for a conductor to be, whenever he saw proper to go there?

Ans. I don't know anything about that. I often see conductors on top, and as he has control of a train, I suppose he has a right to be any where he wants to.

Q. When the conductor thinks there is anything wrong in the train, is it not his duty to go & see what is the matter?

Ans. I don't know whether it is or not. He has men there to see to that, & if they don't go & do it I don't know that it is his duty to see to it.

Q. Did not that whistle blow for off-brakes?

Ans. Yes, sir.

Q. Did you or the other brakesmen go on top after it blew, to let off the brakes?

Ans. I did not; and I did not see the other brakesmen on top either.

136½ Q. Then you did hear the whistle for brakes to be let off, but you did not go to see about it, because you had passed over just before, although the engine kept calling for off-brakes; is that the way of it?

Ans. Yes, sir.

Q. How old are you?

Ans. I don't know, but I suppose I am 28 years old.

Q. To whom did you belong?

Ans. To Esqr. Cartwright.

Re-examined:

Ques. 1st. You speak of others being hurt there. Do you know this of your own knowl', or simply heard others say persons have been hurt there?

Ans. I never saw any person hurt there, but I saw Green & Atkins at Goodlettsville, about one mile from there, shortly after they were said to have been hurt there. I understood Atkins died subsequently from *from* the injury; Green recovered. I don't know of my own knowledge where or how Haskins lost his life.

2. You say that Haskins was a conductor on the road over a
137 month & on the train with you about one week. Then you were both employees of the road during this time, but on different trains?

Ans. Yes.

Ques. 3. Was there more smoke being emitted the morning of the accident than usual or than the ordinary amount?

Ans. I don't know. I can't remember to have noticed.

Q. 4. When the engineer blew to call off-brakes were the brakes taken off?

Ans. They were already off.

Q. Did you ever hear Haskins complain of the height of the bridge?

Ans. No, sir; I never heard him speak of it one way or the other.

his
LOUIS + CARTWRIGHT.
mark.

Subscribed & sworn to before me May 28, 1878.

LEWIS T. BAXTER,
Sp'l Com'r.

138 A. R. JOHNSON testified as follows:

I am 21 years old past; am son of the Mr. Johnson who has just testified. I helped my father measure this bridge. I found it to be 16 feet & 9¼ inches from the iron rail on the track up to the bottom of the sill of this bridge. I don't know where the cross-ties under this bridge were originally, but I have noticed them in the last few days, & I find that the cross-ties, by ballasting being put under there, are several inches above the solid rock through that cut.

Several years ago that bridge was partly burnt, & the R. R. co. put a new one and made it several inches higher than the old one was. After it was so repaired I saw a train stop under that bridge & Mr. Fos. Bowers, a section boss of this road, got on top of a box-car and stood up straight under this bridge, and it did not touch his head. He was a tall man—said to be 6 feet & 4 inches high. He seemed to be
139 standing there as if to test the height, but I don't know that that was his object. Since the bridge was repaired & since Bowers was standing there on top of that car I saw a man on top of box-cars of a train passing there; the train was going north; the man was running along on the top of the cars towards the engine & towards the bridge, & the bridge struck him & knocked him down. He fell on top of the car; whether it killed him or not I do not know. Another man was coming out on top of the train at the time, & I ran to him. I don't know who it was that was so hurt. I saw the negro with his legs cut off that my father has testified about, but I did not see him when struck. He was lying down in the cut. I have heard of several others being hurt there, but I don't know of any of my own knowledge.

Cross-examination:

It was several years ago when I saw a man struck. I was 50
140 or 100 yards from the bridge. I was at the east end of the bridge and east side of the road. The road runs north & south. I could

see the top of the cars. The face of the man struck the bridge I suppose. He was running on top of the car towards the bridge. I was looking at the man at the time. It was the bridge that struck him. I picked up his cap. He did not fall off. A man ran to him when the train had gone 30 or 40 yards beyond the bridge. It was several years ago when the bridge was repaired by the r'y co. It was when the bridge was repaired that I saw Bowers stand on top of the train. I don't say it was his object to measure it. I can't say how long it was from the time Bowers stood up & the man I saw got hurt. I did know Bowers; he is dead. He was uncommonly tall. Up to Christmas I lived at the bridge. I saw them at work in the cut driving rock under the ties. I can't say how much the track has been raised, but I think it was several inches. I have seen freight trains pass under &
141 brakesmen would lower their heads. I do not know that it was necessary. It is up grade nearly to the bridge, within about 200 yards, going north. The trains go slow up grade. They commence going fast from the grade to Goodlettsville, which is one mile from the bridge.

I only knew of the negro and the man I saw get hurt.

A. R. JOHNSON.

Subscribed & sworn to before me May 27, 1879.

LEWIS T. BAXTER,
Sp'l Com'r.

D. M. KELLY testified as follows:

I am working for the St. L. & Southeastern R'y Co., am section foreman, embracing this bridge. I have been such since March, 1875,
142 unless a week or two at a time. Before that I was a laborer on this road. I did not work there when the road was originally built.

Since I have been working there that track has been raised, I suppose, some three inches. In places along there under that bridge & in that cut, I have sometimes dug down for a foot or a foot and a half before I would reach the solid rock. I don't see any solid rock as a bed in working along there, except when I dig down that way. I don't know that the original bed in that cut was a solid rock.

The general object & tendency in repairing a road bed is to raise it in a straight place on the track. For instance, we see in the track a high rail; our point is, as a general thing, to bring the balance of the track along there up to that elevated rail or cross-tie. In tamping we raise the track; so in ballasting we beat rock under the cross-ties & that raises them. Our object is to keep the track level. Although I have been working so long on that road, I don't know whether
143 a brakesman can pass that bridge safely or not if standing erect on a box car. Don't remember that I ever noticed a car when passing under to see whether the brakesmen would pass without stooping. I don't know whether the bridge is high enough or not.

Cross-examination:

I have worked under this bridge in this cut about a year ago last March. I took a lot of dirt from between the cross-ties, and before that took dirt out of the cut and made ditches. I don't remember of taking dirt from any other part of the track. I put rock nearly through the whole cut. I think I put a few rock just under the bridge; two or three wheelbarrow loads I suppose, more or less. The bridge might be

18 or 20 feet wide, more or less. The rocks were to be put between the ties & not under them. I do not remember when the co. rebuilt the bridge. The track I think I raised from 1 to 3 inches. The track has not been raised since, except picking up a low joint.

144 The bridge is down-grade, going north.

D. M. KELLY.

Subscribed & sworn to before me, May 27, 1879.

LEWIS T. BAXTER,
Special Commissioner.

J. W. ROSCOE testified as follows:

I live in Goodlettsville, and my land runs in some 300 yards of that bridge. I was there when that old bridge was repaired after being burned. I know it was built higher than it was before. A box-car, after the new bridge was completed, was placed under the bridge, & Fos Bowers stood up on top of it & his head would not strike the bridge. I remember asking some of the railroad men at the time why they did not measure the height of the bridge in some other way, & the reply was that they wanted to make a practical proof of it. Bowers was a

145 tall man—something over six feet & 2 inches. I mean to say that I was there at the time the test was made. I am not sure that I saw him at the time he was standing on the car, but was there on the occasion, & it was talked of & understood that he did stand up and make the test, though I can't say that I saw him actually standing up there.

That is a deep cut there through solid rock, but the soil from the top of the embankment & the springs there bring soil and mud into that cut, and thus fill up, to some extent, the cut. I have seen the ties under the mud once; there were scarcely any ditches; they were filled up with mud & dirt. This, of course, tended to rot the cross-ties, & in repairing it they naturally fill up under the cross-ties & raise them, and I am satisfied that these cross-ties are up from that bed several inches more than when the road was first built.

X-examination:

146 Under the mud I speak of there was a rock bottom; the mud washes from a field & the banks. From my own knowledge I cannot say any mud came out of the cut; I have been in the cut; I do not know what is under the ties; I do not know how much rock was put in. The conclusions which I have come to are from the appearance of the track at different times.

I do not know that the track is higher now than when the bridge was built. I never measured the height of the bridge; the public use the bridge; I do not know whether it is with the owner's permission; I have seen trains pass under the bridge; I do not remember of ever seeing any one on top of the train; I never saw an accident at the bridge; I don't remember of seeing Bowers on top of the train at the bridge.

J. W. ROSCOE.

Sworn to & subscribed before me May 27, '79.

LEWIS T. BAXTER,
Special Com'r.

147 R. T. LOONEY testified as follows:

I measured this bridge this morning in four places. Esqr. Connell was present, & took the measurements down, and has stated them correctly in his deposition, and I adopt them.

East rail on south side of the bridge is 16 feet 9¼ inches from bottom of sill of bridge, measured by tape-line.

West rail is 16 feet & 8 inches; north side of the bridge & west rail is 16 feet & 7 inches; east rail of north side is 16 feet & 9½ inches.

Several years ago that bridge was partly burnt, and it was dangerous for some time for passengers to go over it. It was repaired or rebuilt & made some 14 inches higher than the old one was. I know Fos Bowers well; he is a very tall man—over six feet—about the tallest
148 man in that neighborhood. My recollection is that the track there under the bridge was originally on a solid rock, on which the cross-ties were laid. I have examined it lately, & these cross-ties are now some several inches above that rock.

A spring comes out above there and runs down into the cut, & mud & dirt wash in there. I have seen these fills cleaned out and I am satisfied that it is at least eight inches from the bottom of those cross-ties down to that solid rock.

I have seen repairing done a good deal on the railroads & I know that in this work they are always knocking under the cross-ties—tamping it I believe they call it—that necessarily raises the cross-ties. I never saw them lower the cross-ties any.

R. T. LOONEY.

Subscribed & sworn to before me May 27, 1879.

LEWIS T. BAXTER,
Special Com'r.

149 *Deposition of Josiah Freeman.*

Ques. 1. How long have you known the locality of the Johnson Bridge on the St. Louis & S. E. R'y, near the junction?

Ans. Ever since the road was constructed.

Ques. 2. Did you ever run on the road?

Yes, as brakesman & baggage-master for some time; off & on for 2 years.

Q. 3. Did you ever pass under the bridge on the box-cars?

Ans. Yes, frequently. I passed there on top of the train. I would tuck my head a little; by so doing I could pass safely. The bridge can be seen by a person on top of the train for 200 yards on the Nashville side & further on the other side. While I knew the bridge was a place to be passed with care, the danger was easily avoided by the use of ordinary care.

(Answer objected to by att'y for plaintiff.)

Q. 4. Has the track been raised since the road was built?

150 Ans. The cut is through solid rock, and I don't think the track has been raised there. If it has, it has not been perceptible to me; and I am well acquainted with the place. Certainly no material elevation has been made.

Q. 5. How many persons have you known to be hurt there?

Ans. None of my own knowledge; but have understood that Green was hurt there & Haskins was supposed to have been hurt there, and then a colored man, who told me that while the train was passing through the cut he attempted to ascend the box-car & fell off & had his legs broken, and he subsequently died of the injury. I do not remember his name.

(Ans. objected to by att'y for pl't'ff.)

Cross-examined:

I have examined the track there by getting down & looking it carefully to see whether it had been elevated or not. I only judged from passing along there on the train. I have not been working on
151 this road for some 6 or 7 years. I don't know how many overhead bridges there are between here and Evansville, Indiana, though I am on that road part of two years. I know there are three railroad bridges between Nashville & Goodlettsville. None of them are too low, unless they are where Haskins is said to have been killed; and I don't know that that one is too low for a man to pass under safely standing erect on a box-car. I ran as brakesman from here to Bowling Green, but have no idea of the number of overhead bridges on the road nor how many of them or whether any of them would allow one to stand erect on a box-car & pass under without being struck.

JOS. FREEMAN.

Subscribed & sworn to before me May 29, 1879.

LEWIS T. BAXTER,
Sp'l Com'r.

152 CALHOUN & OPDYKE, TRUSTEES, *vs.* ST. L. & SE. R'Y CO. (CONSOLIDATED) ET AL. } In re I. K. Haskins, on petition of Sarah B. Haskins.

Report of the special commissioner.

Pursuant to an order of the present term, directing the undersigned to hear proof & report whether James H. Wilson, receiver, is liable for the injuries sustained by the petitioner in this case, &, if so, in what amount, the special commissioner reports as follows:

Conductor I. K. Haskins, who had been in the employ of the St. L. & SE. R'y Co. 5 or 6 weeks, was killed by being struck on the head by an overhead bridge on the line of the St. L. & SE. R'y about daylight on the morning of October 10th, 1878. The bridge is situated over & about the middle of a cut on said railway, about 1½ miles north of Edgefield Junction. Going north from the junction it is up-grade to a point
200 or 300 yards this side of the bridge, and from this point to
153 & beyond the bridge it is down-grade. The engineer had whistled for brakes "off" several times while going up grade, ½ mile this side of the bridge, and Haskins seems to have gone on top of the train to see that the brakesmen had done their duty. It was hardly light, somewhat foggy, and the smoke of the engine hung over the cars. While thus in the discharge of his duties he was struck & instantly killed. The bridge at the place of the accident is one of 6 or 7 overhead bridges on the line of this railway between Nashville and Earlington, Ky., but the only one which is not high enough to allow a man standing erect on the top of a car to pass under safely. The bridge was built soon after the building of the road, but was partially rebuilt several years ago, at which time it was tested & found high enough to allow a man more than 6 feet high to pass under safely while standing erect on the top of a freight train. The ties of the road in the cut were originally laid on the solid rock, but gradually the road-bed has been
154 raised 6 or 8 inches by ballasting. The bridge has, no doubt sunk some inches. Six or seven years before the killing of Haskins a brakesman, named Green, was struck by this bridge & badly injured. Several others have been struck by it. At present the

distance from the top of the rails to the timbers of the bridge is 16 feet & 9¼ inches.

The height of an ordinary freight car is about 12 feet, leaving less than 5 feet between the top of a car & the timbers of the bridge. From the number of persons hurt at this bridge the receiver must have been informed of its condition. The railroad authorities previously managing this railway knew that the bridge was too low & dangerous. At the time of the accident Haskins was earning from $75 to $90.00 per month. He was 35 years of age, in good health, a man of good morals & character, and left a wife & one child.

The commissioner thinks, from the proof adduced, that the receiver is liable for the injuries sustained by the petitioner, and that
154½ $5,000.00 would be a just & fair compensation for the same.

All of which is respectfully submitted.

LEWIS T. BAXTER,
Special Commissioner.

Since the filing of this report the receiver has asked to file the following statement, under oath, in reference to his knowledge of the height of the bridge which caused the accident, viz:

"As receiver in the case I have to say that no report was ever made to me that the bridge in question was too low, and that I never had knowledge of the fact till after I had caused a careful investigation to be made in reference to the death of Haskins.

"JAMES H. WILSON,
"*Receiver.*

"JUNE 13, '79."

155 *Decree.—Oct.* 24, '74.

On the 24th day of October, 1874, a decree was rendered in the words and figures following:

This day came the parties herein, and the defendant having admitted the default complained of in the bill, the motion of the complainants for the appointment of a receiver, according to the prayer of the bill, upon the pleadings, exhibits, and affidavits on file:

It is ordered and decreed that this court doth, on this 24th day of October, 1874, order and adjudge that Jediah F. Alexander, of Greenville, Illinois, be and he is hereby appointed receiver in this cause, with power to enter and take possession of the railroad of said St. Louis and Southeastern Railway Company (Consolidated), in the State of Tennessee, and all its branches in said State of Tennessee, together with all the supplies of materials provided by the said company to be used in the construction, reconstruction, and repair of said road, or to be used in operating the same, with all side-tracks, switches, station-houses, warehouses, water-stations, turn-tables, rights of way, and grounds in use, or necessary or convenient to be used, in operating said road, belonging to said company; also all locomotives, engines,
156 cars, and rolling-stock of every kind and description owned by and belonging to said company, and used in operating the roads of the said company in the State of Tennessee, and all tools and implements used in operating said roads or provided therefor, and all machine-shops, and all work-shops, and the machines, tools, and implements therein, and stock of wood, iron, or other materials on hand belonging to said company to be used in the construction of shops, or

shop-machinery, and all money, credits, choses in action belonging to said company; and all other property, real or personal, of whatsoever name, nature, or description, and wheresoever situate within said State belonging to said company, and provided by it to be used in the prosecution of its business in said State, whether the same be in actual use or not, and the same to hold, use, and dispose of under the order and direction of this court, to be made from time to time herein and therewith until otherwise ordered. The said receiver shall operate said company's road and branches situate in the State of Tennessee, throughout the whole extent thereof, according to the usual course of business thereof, and to the best advantage for the interest of parties concerned, and to that end shall operate the said railroad in connection with the whole consolidated railroad of the said company defendant, in
157 such manner as to make the *the* railroad in his possession a part of the through line from St. Louis to Nashville, and generally to maintain said road, its rolling-stock and fixtures and appurtenances in thoroughly good, efficient, and safe condition for use; and to provide for that purpose by purchase for cash or credit, or partly for cash and partly on credit, materials and supplies whenever necessary. And the corporate officers of said company, their agents, servants, and employees having the custody and charge of said property and effects of said company, or any part thereof, to be taken possession of by said receiver as aforesaid, are hereby ordered and required forthwith, upon the request of said receiver, to surrender the same, and all books, papers, accounts, vouchers, and agreements, and evidences of debt due to or by said company, so far as within the jurisdiction of this court, to the said receiver, his agents, or employees, and all of the same without any such actual delivery shall immediately, upon his giving a bond, and taking the oath herein required, be held and taken to be vested in his actual possession, and subject to his order, for all purposes needful in the prosecution, for the business of the said company.

And the said receiver is hereby authorized and empowered to retain, employ, and pay all such agents, servants, laborers, clerks, and assistants as in his discretion may be necessary under him to carry
158 this order into effect with economy and prudence, and to make, enter into, and perform all contracts for the obtaining of necessary supplies and materials, and for the prosecution of said business. And for the purposes above named, and for the purpose of paying all rentals upon leased property and equipments, and terminal expenses, said receiver is hereby fully authorized and empowered to appropriate and apply the property, money, and effects aforesaid, vested in him as aforesaid, with the current earnings of said road and business, so far as the same may be necessary; and said receiver is hereby ordered and required to keep or cause to be kept, in a regular and systematic order, strict and regular accounts of the business of said trusts in his hands, and of the daily receipts and disbursements of money, distinguishing in such accounts the receipts and disbursements of the said road of the said company earned and expended in the State of Tennessee, and stating the mode of division of the earnings arising from through business which passes over any portion of the company's road in other States, and showing the items in detail, and required to file in the office of the clerk of this court, once in each month, and within twenty days after the expiration of each month, an abstract account of his receipts and disbursements, and shall as often as required by the special order of this court make full reports of his doings and settle accounts.

159 And the said receiver is also hereby ordered and required to deposit the surplus money accruing in his hands over and above current expenditures in some national bank or banks, to his credit as receiver herein.

It is further ordered by the court that said receiver, out of the net earnings that may come into his hands from the operation of the road, and as speedily as the same can be done without prejudice to the current business, pay all certificates of indebtedness and all such balances as are now due to the operatives and persons employed heretofore by the said company in the prosecution of its business, in operating its road, for supplies and materials, and in maintaining and keeping the same in repair since the first day of January, 1874, a schedule of all which said indebtedness shall be prepared by the said receiver as speedily as practicable, and filed with the clerk of the court; provided, however, that no payments on account of such balances or indebtedness shall be made until the said schedule has first been filed, as provided. The receiver shall also pay, in like manner, all sums of money which are now or may hereafter become due upon taxes due upon any of the property coming to his hands as receiver, and also all interest or principal due or to become due upon any purchase of property which comes to his hands as receiver, and which, in the judgment of

160 *of* the said receiver, it will be beneficial to the estate in his possession to pay.

The said receiver will also pay out of the net earnings of the railroad, and as speedily as may be done consistently with the best interests of the business, all sums which may be due by the said company for supplies heretofore purchased, and all sums due or to become due by said company and road to connecting railroads for freight or carriage of passengers or sales of tickets, and shall recognize all tickets heretofore sold on behalf of the said company, and shall collect all sums due to the said company, whether for the sale of tickets, for freights, or otherwise, from other railroad companies or others, and in all such matters may adjust the accounts with other portions of the railroad of said company upon a mileage basis. And for the purpose of providing money to make payments on account of the balances of purchase-money due to the State of Tennessee the said receiver may, from time to time as the same be necessary, make and issue his certificates in such general form as may be approved by this court, providing for the payment thereof and of any moneys applicable for that purpose, which certificates shall bear interest at the rate of seven per centum per annum, and the sum or sums represented by such certificates shall, unless

161 previously discharged, be paid out of any moneys realized upon a foreclosure and sale of the mortgaged property within the jurisdiction of this court equally with any other liability incurred by the receiver in the management of the said railroad and the protection of the said property coming into his hands as receiver aforesaid.

And if after making all payments hereinbefore authorized there shall remain in the hands of said receiver at any time any surplus monies, he shall report the same to this court and await the further order of the court as to the disposition of the same.

And the said receiver is further directed to proceed, with all practicable dispatch, after he enter' upon the discharge of his duties, and in connection with the president of said company, to take an inventory of all and singular the property and effects of every description which may come to his possession or under his control in virtue of this order, and to file such inventory in this court.

And the receiver is further empowered in his discretion to remove any of the officers or employees of said railroad company other than the president and directors thereof, and such other officers as
162 pertain to and are necessary to maintain the corporate organization; but notwithstanding this reservation the entire management of said road and the power to appoint and remove all managers, superintendants, engineers, and other agents and employees in any way concerned in operating the said road shall belong to the receiver.

The receiver acting in pursuance of this or any order or decree of this court herein in good faith shall not be individually liable for any breach of any contract entered into by him as such receiver, or for the fulfillment of any obligation entered into by him as such receiver, or for any injury to the person or property of the parties or of third persons, or for the faults or negligences of his subordinates, but the property, moneys, and effects that shall at any time be in his hands as such receiver shall be bound for all such breaches or wrong, and may, from time to time as may be necessary, be applied in such manner as this court shall direct.

And it is further ordered that the said defendants have leave at any time to show cause, if any they have, why this order should not be set aside, vacated, or amended, upon giving to the complainants
163 or their solicitors reasonable notice of this motion, and that upon the hearing of said motion the matter of the same shall be considered without prejudice to the defendant from the order now entered.

It is further ordered that said receiver, before entering upon his duties aforesaid, shall enter into a bond, with two sureties, to the acceptance of the court, in the penal sum of twenty thousand dollars, conditioned for the faithful performance of all duties enjoined upon him by this order.

And it is further ordered that the said Jediah F. Alexander shall take an oath before the clerk of this court faithfully to perform his duties as receiver in this cause.

Decree—Dec. 7, 1874.

On Dec'r 7th, 1874, a decree was entered as follows:

In this cause the complainants produce an amendment to the bill heretofore filed by them on the 24th Octo., 1874, and ask leave of the court to file it, and for good cause shown the court allows the amendment to be made, and orders the same to be filed; and thereupon the complainants move the court for a modification of the order of October 24, 1874, appointing a receiver; and thereupon, in the presence of E. L. Abbott, who appears in open court as counsel of the defendants, and does not resist the motion, but consents, thereto, so far as he has
164 power so to do, the court orders that the said order be so modified as to authorize and allow the receiver, for the purpose of providing money to make payments on account of the balance of the purchase money due the State of Tennessee for the road sold as the Edgefield and Kentucky Railroad, from time to time to issue his certificates, which altogether shall not exceed two hundred and fifty thousand dollars, on so much of the road mentioned in the pleadings as lies and is situated in the State of Tennessee, in such general form as may be approved of by compl'ts, providing for the payment thereof out of any of the monies which are applicable for that purpose, which certificates shall bear interest at a rate not exceeding ten per cent. per annum, and the sums represented

by such certificates shall, unless previously discharged, be paid out of any money realized upon a foreclosure and sale of the mortgaged property within the jurisdiction of this court equally with any other liability incurred by the receiver in the management of said railroad and the protection of the said property coming into his hands as receiver aforesaid; and it is further ordered that said certificates may be sold below par if necessary so to do.

165 *Decree—1st November*, 1878.

On November 1st, 1878, a final decree was entered in words and figures following, to wit:

This cause came on to be heard at this term and was argued by counsel, and upon consideration thereof it was, on this first day of November, 1878, ordered, adjudged, and decreed as follows:

I. That the complainants are citizens of the State of New York; that the defendants, The St. Louis and Southeastern Railway Company (Consolidated), is a corporation created and organized under and by virtue of the laws of the State of Tennessee, and is a citizen of said State within the meaning of the Constitution and laws of the United States relative to the jurisdiction of this court.

2. That the St. Louis and Southeastern Railway Company (Consolidated) was by the laws of the State of Tennessee, and by the laws of the States of Indiana, Illinois, and Kentucky, created by the consolidation of the following railroad companies, viz: The St. Louis and Southeastern Railroad Company, of Indiana and Illinois, a corporation created under the laws of said States, respectively; The St. Louis and Southeastern Railroad Company (Kentucky Division), a corporation created under the laws of the State of Kentucky; The Evansville, Henderson and Nashville Railroad Company, a corporation created
166 under the laws of the State of Kentucky; and The Nashville, Chicago and St. Louis Railroad Company, a corporation created under the laws of the State of Tennessee; and that by virtue of such consolidation said St. Louis and Southeastern Railway Company (Consolidated) acquired and became vested with all and singular the rights, powers, privileges, immunities, and franchises, together with the property, real, personal, and mixed, which the said several railroad companies respectively held, possessed, or owned at the time of such consolidation.

II. That the deed of trust or mortgage from the St. Louis and Southeastern Railway Company (Consolidated) to Philo C. Calhoun and George Opdyke, trustees, complainants, bearing date October 1, 1872, as set forth in the original bill of complaint herein, was duly executed and delivered by said railway company to said trustees to secure the holders of bonds therein described payment of the principal and interest thereof and for all the purposes in said mortgage set forth; that it was duly recorded in the several counties of the State of Tennessee through which said railroad passes, is a valid conveyance for the purposes therein mentioned, and constitutes a lien upon the premises therein described and conveyed and situated within the jurisdiction of this court, subject, however, in whole or in part, to the several liens
167 hereinafter mentioned, and in the manner and to the extent hereinafter specified, but not otherwise.

IV. That the St. Louis and Southeastern Railway Company (Consoldated), for value received, issued & delivered to various persons forty-nine hundred and twenty-two (4922) bonds of the said company, duly

executed and authenticated, as required by said mortgage, said bonds bearing even date therewith, and being of the denomination of one thousand ($1,000) dollars each, payable in gold coin of the United States on the 1st day of November, in the year 1902, with interest thereon *on* the rate of seven per centum per annum, payable semi-annually, on the 1st days of February and August in each year, in gold coin of the United States, on the surrender of the interest coupons attached thereto. That said forty-nine hundred and twenty-two (4922) bonds are now outstanding in the hands of legal holders thereof, who are entitled, for the security of the principal and unpaid interest thereon, to the joint and equal benefit of the said mortgage or deed of trust.

V. That the said St. Louis and Southeastern Railway Company (Consolidated), on the 1st day of February, 1874, and on the first days of August and February of each succeeding year, failed to pay any installments of interest on said bonds falling due on said days respect-
168 ively, or any part of any such installment, and that no part of said interest has been paid by said company, or by any one for it, altho' the said interest was duly demanded by the holders of said bonds and interest coupons, when and where said interest became due and payable, according to the tenor and effects of said bonds.

VI. That the amount of interest on said bonds so due and payable by said company on said February 1, 1874, was one hundred and seventy-two thousand two hundred and seventy dollars ($172,270); and the like sum of $172,270 became due and payable thereon on the first days of August and February, respectively, in each succeeding year thereafter; that each and all of said installments of interest bear interest at the rate of six per cent. per annum from their maturity, respectively, until paid, which last-mentioned interest is wholly unpaid; that the amount of interest now due on said bonds and unpaid, including the interest on said unpaid interest, will, on January 1, 1879, amount to one million eight hundred and twenty-one thousand seven hundred and fifty-five dollars and twenty-five cents ($1,821,755.25). That by reason of the defaults aforesaid on the payments of the interest on said bond, and the continuation thereof as aforesaid, the principal sum of said bonds be-
169 ing four million nine hundred and twenty-two thousand dollars ($4,922,000), under the provisions of said mortgage and by virtue of the election of said trustees, complainants, has become due and payable and yet remains due & unpaid.

The said trustees, the complainants Calhoun and Opdyke, are entitled to have all of said above-mentioned sums of money paid into court for the benefit of the legal holder' of said bonds and coupons.

VII. That the mortgage or deed of trust from the Nashville, Chicago and St. Louis Railroad Company to Edward F. Winslow, bearing date September 26, 1872, as set forth in the amended bill of complaint herein, was duly executed and delivered by the said railroad company to said Winslow; that the said mortgage was duly recorded in the counties of Davidson and Robertson, in the State of Tennessee, in which the property covered by said mortgage is situated, and now constitutes a lien upon the premises therein mentioned prior to all other liens, excepting that of the receiver's certificates, as hereinafter mentioned. That the said railroad company made its bond in the form mentioned in the said trust-deed or mortgage and sealed the same with the common or corporate seal of said company, and caused the names of the president and secretary to be thereto affixed; that the said bond
170 was for the payment of the principal sum of money of one million eight thousand dollars in United States gold coin, at par, to the

holder of said bond, thirty years from the date thereof, with interest thereon from date, payable semi-annually in gold coin as aforesaid, on the first days of January and July of each year; that the said Nashville, Chicago and St. Louis Railway Company thereupon delivered said bond secured by said mortgage or deed of trust to the said Edward F. Winslow, who thereupon and thereby became the holder of said bond, and entitled to the moneys therein mentioned and agreed to be paid; that the said Winslow thereafter, for valued received, assigned and delivered the said bond and mortgage or deed of trust to secure the same to the said Calhoun and Opdyke, trustees and complainants herein, by valid assignment in writing, and they now hold the said bond and deed of trust securing the same as trustees for the holders of the bonds issued under the deed of trust or mortgage to the complainants, heretofore mentioned, dated October 1, 1872. That the said Nashville, Chicago and St. Louis Railroad Company, on the first day of January, 1874, and on the first days of July and January in each succeeding year thereafter, failed to pay any of the installments of interest on said bond which fell due and became payable on said
171 days respectively, or any part of such installments, according to the tenor and effect of said bond; that said default had continued for more than thirty days thereafter and prior to the filing of the said amended bill herein; that the amount of said interest on said bond so due and payable by said company on said first day of January, 1874, was thirty-five thousand two hundred and eighty dollars ($35,280), and the like sum of $35,280 became due and payable thereon on the first days of July and January in each succeeding year; that all of said installments of interest bear interest at the rate of six per cent. per annum from their maturity, respectively, until paid, which last-mentioned interest is also wholly unpaid; that the amount of interest now due on said bond and unpaid interest, including interest on said unpaid interest, will, on the first day of Jan'y, 1879, amount to four hundred and forty-six thousand five hundred and ninety-two dollars; that by reason of the default aforesaid in the payment of the interest of said bond, and the continuance as aforesaid, the said principal sum of said bond being one million and eight thousand dollars ($1,008,000), under the provision of said bond, has also become due and payable and yet remains due and unpaid.

That the said St. Louis and Southeastern Railway Company
172 (Consolidated) has, under the terms and *and* provisions of said consolidation, assumed and became bound for the payment of the said bond of the Nashville, Chicago and St. Louis Railroad Company and the interest thereon.

That said assignees, the complainants Calhoun and Opdyke, are entitled to have all of the said above-named sums of money paid into court for the benefit of the legal holders of the bonds of the said St. Louis and Southeastern Railway Company (Consolidated), secured by the said deed of trust above mentioned, dated Octo. 1, 1872.

VIII. That the said St. Louis and Southeastern Railway Company (Consolidated) is indebted to the unknown holders of the certificates issued by the said, then receiver herein, J. F. Alexander, pursuant to a decree made herein December 7, 1874, in the principal sum of two hundred and fifty thousand and the unpaid interest thereon; that the said certificates were sold for value to the said unknown holders, and the net proceeds thereof were applied to the payment of the lien held by the State of Tennessee on all that portion of said consolidated railway formerly known as the Edgefield and Kentucky

Railroad, afterwards the Nashville, Chicago and St. Louis Railroad, and now, by virtue of the consolidation above mentioned, the defendant, The St. Louis and Southeastern Railway Company
173 (Consolidated); that the principal of said certificates and the interest thereon will amount, on the first day of January, 1879, to the sum of two hundred and eighty-nine thousand dollars ($289,000); that the unknown holders, to secure the payment of said certificates with interest, have a lien prior to all others upon the mortgaged premises herein'fore mentioned, and situated within the jurisdiction of this court.

IX. That unless the St. Louis and Southeastern Railway Company (Consolidated) shall, on or before the first day of January, 1879, pay into court in this cause the sum of one million eight hundred and twenty-one thousand and fifty-five dollars and twenty-one cents, being the amount of the interest accrued on the bonds outstanding and secured by said mortgage or deed of trust to Opdyke and Calhoun, complainants, with interest thereon as above mentioned, and the further sum of four million nine hundred and twenty-two thousand dollars ($4,922,000), being the principal of said outstanding bonds, secured by said mortgage to the complainants as above mentioned, and the further sum of four hundred and forty-six thousand two hundred and ninety-two ($446,292) dollars, being the amount of the several installments of interest accrued on the bonds outstanding and secured by the
174 mortgage or deed of trust from the Nashville, Chicago and St. Louis Railroad Company to Edward F. Winslow, with interest thereon as above mentioned, and the further sum of one million and eight thousand dollars ($1,008,000), being the principal sum of said outstanding bond secured by said mortgage to said Winslow, and also the costs of said complainants herein to be taxed, then, and in that event, the said mortgaged premises shall be sold as hereinafter ordered for the payment of said several sums.

X. For the several debts hereinafter mentioned and directed to be paid, the parties to whom the same are owing respectively have liens upon the property and premises herein described and in order as follows, viz:

First. Upon the following-described property, viz: All that certain railroad in the counties of Robertson and Davidson, in the State of Tennessee, formerly known as the Edgefield and Kentucky Railroad, and the other property, real, personal, and mixed, and all the franchises, rights, claims, and privileges conveyed to it, or intended to be so conveyed, by Edward F. Winslow and Laura B., his wife, by deed bearing date Sept. 26, 1872, to the said Nashville, Chicago and St. Louis Railroad Company; and also all other property of every description
175 in any wise appertaining to the said railroad, whether real or personal, including all lands, buildings, bridges, iron rails, equipments, rolling-stock, and other property appertaining to said railroad, and also all the franchises, rights, and privileges thereof.

Second. Upon all the rights, franchises, privileges, and immunities of the defendant corporation, the said St. Louis and Southeastern Railway Company (Consolidated), and upon all the property of said company or appertaining to its railroad within the jurisdiction of this court, including more especially all that part of said consolidated railroad from a point upon the southerly line of the State of Kentucky and northerly line of the State of Tennessee, near Guthrie, in the State of Kentucky; thence by way of Springfield, in the county of Robertson, State of Tennessee, to the Edgefield Junction; thence by way of Edgefield, within the State of Tennessee, over the line of railway

owned and operated by the said consolidated company and by the Louisville and Nashville Railroad Company, to the city of Nashville. And upon all the rolling-stock owned by the said consolidated company, and all other property, real, personal, and mixed, of said company, within the jurisdiction of this court, including all the bridges, rights of way, depot-grounds, land, all depots, station-houses,
176 engine-houses, car-houses, freight-houses, or other buildings, all car-shops and machine-shops, all materials and tools for the construction, operating, or repairing the said railway; and also all franchises and property now or heretofore belonging to the said consolidated railway company, together with all and singular the tenements and appurtenances thereunto belonging, and the reversions, remainders, tolls, incomes, rents, issues, and profits thereof, and also all the estates, rights, titles, and interest whatsoever, as well at law as in equity, of the said consolidated railway company, of, in, and to the same within the jurisdiction of this court.

The liens are as follows:

1. For all costs taxed or to be hereafter taxed in this cause, for all proper charges and allowances, including attorneys' fees, counsel's fees, and compensation to said complainants as trustees herein, and by all sums expended by them in and about the management of said trust the said complainants have a lien prior to all others.

2. For the debt adjudged to be due to the holders of the receiver's certificates they have a lien subordinate to the above and prior to all others.

3. For the debt adjudged to be due under the said mortgage to Edward F. Winslow and by him conveyed to Calhoun & Opdyke in trust as above mentioned, said complainants, Calhoun & Opdyke,
177 have a lien subordinate to those of the complainants for cost and allowances and holders of receiver's certificates, and prior to all others.

4. For the debt adjudged to be due under the aforesaid mortgage to the complainants, Calhoun & Opdyke, said complainants have a lien subordinate to those of cost and allowances and the holders of the receiver's certificates and said Calhoun & Opdyke as assignees in trust, as aforesaid, and prior to all others.

XI. In case default shall be made in the payment of all or any of the said several sums of money herein adjudged to be due the said Calhoun and Opdyke, complainants, it shall thereupon, without further order herein, be the duty of W. B. Reese, esq., who is hereby appointed special commissioner for that purpose, to sell said mortgaged premises, and he shall proceed to sell and dispose of so much of all and singular the railways and premises of the said defendant corporation, The St. Louis and Southeastern Railway Company (Consolidated), as is within the jurisdiction of this court, at public auction, in the city of Nashville, Tennessee, at such place in said city and at such time or times as he may appoint, having first given notice of the time and place of such sale by advertisement to be published not less than 3 times a
178 week for nine weeks in one or more newspapers in the city of Nashville, Tennessee, and shall report his proceedings in the premises to the April term of this court, 1879.

Upon the confirmation of such sale and the payment of the purchase-money the clerk of this court shall make and deliver to the purchaser or purchasers of the property so sold good and sufficient deeds for the same, free of all liens herein mentioned; and thereupon the receiver will

deliver to the purchaser of said property the possession of the same, which sale made as aforesaid shall be a perpetual both in law and equity against the railway company and all other persons whomsoever lawfully claiming or to claim the said railroad and premises and property so sold, or any part thereof, by, from, through, or under it, and all the equities of redemption of the said defendant company shall be according to the prayer of the original & amended bill herein forever barred and foreclosed.

The purchaser or purchasers of said railway and premises shall be required to pay not less than ten thousand dollars cash in hand and the balance of the purchase-money in not less than two months from the date of the confirmation of such sale, or as the court may
179 then order.

But, upon the payment of the cash hereinabove provided for, if the purchaser shall be a holder of the receiver's certificates or any of the bonds herein declared a lien on the trust property, then, and in that event, if the amount bid shall suffice to meet the cash payment and the receiver's certificates the latter may be received from the purchaser by the clerk as cash; but if the sum bid shall not suffice to meet the cash payment and the receiver's certificates, then such certificates shall be received as cash only to the extent of the pro rata of the purchase-money which the purchaser would be entitled to receive thereon; and if the sum bid should be more than shall suffice to make the cash payment and the certificates, then, and in that event, after providing for said cash payment and the payments of the certificates, the clerk shall receive from the purchasers any of the bonds hereinbefore declared liens upon the trust properties, as cash, to the extent of the pro rata of the purchase-money which the purchaser would be entitled to receive upon such bonds.

Said bonds and certificates shall be proved before the clerk and paid over to him within two months of the confirmation of such sale, or as the court may then order.

180 But all holders of said bonds or securities who shall fail to prove the same before the clerk within the time specified shall be barred from participating in the proceeds of such sale. The proceeds of the sale of the premises hereinabove mentioned shall be applied as follows:

XII. 1. To the payment of the costs of said complainants in this action, including court cost and attorneys' fees, as hereinabove mentioned.

2. To the payment of the amount herein adjudged to be due to the holders of receiver's certificates, and if said proceeds be insufficient to pay the same in full then to their payment pro rata.

3. To the payment of the interest on said bond secured by the mortgage to Edward F. Winslow, and assigned to the complainants Opdyke and Calhoun, with interest on such several installments of interest from their maturity, respectively, until paid as above mentioned; and if the proceeds shall exceed the amount thereof, then to be applied to the payment of the principal of said bond.

4. To the payment of the coupons or interest installments on the bonds secured by the said mortgage to the complainants and ultimately to the principal thereof, in the same manner as is provided with
181 reference to the said Winslow mortgage.

5. The surplus, if any, after making all such payments, to be paid to the defendant corporation, The St. Louis and Southeastern Railway Company (Consolidated).

XIII. As to the mortgage to the complainants herein mentioned this decree is without prejudice to the rights of the parties in suits and proceedings had to foreclose such mortgage in other jurisdictions; and whatever payments may be made on account of the bond secured by said mortgage under proceedings in this cause shall be applied and operate as a payment pro tanto thereon, but not as an extinguishment of said bonds or of the lien of said mortgage on any property except such as may be sold under decree herein.

XIV. If either of the sums of money herein directed to be paid on or before January 1, 1879, shall be paid before that day, there shall be allowed a rebate of interest at the rate of six per cent. per annum from the date of such payment until January 1st, 1879, unless such payments should be on account of the receiver's certificates above mentioned, in which case the rebate of interest shall be at the rate of ten per cent. per annum.

182 XV. As to the net earnings which have or may from time to time come into the hands of James H. Wilson, as receiver herein, of so much of said premises covered by the mortgage to complainants, and lying and being within the jurisdiction of this court, it is ordered and adjudged that said earnings be applied to the payment of the cost, expenses, and allowances of the said complainants, and the residue to the reduction of the respective debts hereinbefore directed to be paid and in the order hereinabove mentioned of the distribution of the proceeds of sale.

XVI. In order that the court may be thoroughly informed as to the transactions of the receiver in the management of the trust properties placed in his hands in this case, Lewis T. Baxter is hereby appointed special commissioner to examine and report upon the same; and in making such examination he will be aided by the advise of R. McP. Smith, esq., one of the solicitors of this court, who is hereby appointed counsel for the said commissioner. The commissioner will cause the said receiver to appear before him and pass his accounts, and will charge him with all sums received in the management of the said property, and all rents and profits and tolls which have come

183 to his hands, and will credit him by all disbursements properly made in the operation, repair, preservation, and maintenance of the road and its properties, and with reasonable counsel fees. The commissioner will ascertain and report the net earnings of the entire line of road operated by the receiver, and the amount of such earnings credited to the line of road in Tennessee, or which should have been credited; and in like manner he will ascertain and report the charges made upon the entire line, and the amount thereof debited to the line in Tennessee, and in each case the basis upon which such division is made.

The commissioner will report the amount of earnings paid into this court or paid out by the receiver under the orders of this court, and the purposes for which said payments were made, and what funds, if any, remain in the court or in the hands of the receiver.

The commissioner will also report as to the condition of the various suits by and against the receiver in the State courts and the purposes for which said litigation is being prosecuted. The commissioner will also report all other matters and things which may seem proper and useful to have the court fully advised in the premises, and shall enter upon the duties of this reference as soon as convenient, and shall

184 complete the same and report his proceedings and conclusions therein by the first day of the next April term of this court.

On Nov. 16, 1878, a decree was entered in said cause in words and figures following:

On the petition of Sarah B. Haskins, widow of J. B. Haskins, deceased, leave is granted for suit to be brought in the State court or in the United States court against the defendant railway company, its officers and agents and receiver, in the name of the widow or personal representatives of said deceased, or in the name of any other proper party, to recover for the use of said widow and next of kin of said deceased damages for the alleged wrongful killing of the said deceased by said R. R. company, its officers, servants, and receiver.

On the 12th May, 1879, the following order was made:

In the cases by petition of Jeff. Haskins and of Rich'd D. Mulloy, adm'r, and of Mrs. Sallie B. Haskins, the petitioners have leave to take proof before Lewis T. Baxter, commissioner, upon giving J. H. Wilson, receiver, or Demoss & Malone, his attorneys, three days' notice of the time and place.

185 On the 14th June, 1879, a decree was rendered as follows:

The matter of Mrs. Haskins' petition was heard on the report exceptions, and testimony, when the court was of opinion that the petitioner is not entitled to the relief sought, and that the exceptions be sustained and petition dismissed with cost for which execution should issue; accordingly so decrees. Petitioner prays an appeal, which is granted upon bond and security being given according to law within thirty days.

186 *Appeal bond.—Filed July 3, 1879.*

In words and figures following:

Know all men by these presents that we, Mrs. S. B. Haskins, principal, and E. D. Robinson and Thomas J. Haskins, securities, are firmly bound unto the St. Louis and Southeastern Railway Co. (Consolidated), and to James H. Wilson, receiver of said railway company, in the full and just sum of two hundred and fifty dollars, to be paid to the said St. Louis and Southeastern Railway Co. (Consolidated), and to said James H. Wilson, receiver as aforesaid, or their successors; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this 17' day of June, 1879.

Whereas the above-named Mrs. S. B. Haskins has taken an appeal to the October term, 1879, of the Supreme Court of the United States at Washington City, to reverse a decree rendered in the cause of B. C. Calhoun and Opdyke, trustees, against the St. Louis & Southeastern Railway Co. (Consolidated), in which cause she filed her intervening petition against James H. Wilson, receiver of said railroad co., by the circuit court of the United States for the middle district of Tennessee:

187 Now, therefore, the conditions of the above obligation is such that if the above-named S. B. Haskins shall prosecute her said appeal with effect, and answer all cost if she shall fail to make good her plea, then this obligation to be void; otherwise, to remain in full force and effect.

SALLIE B. HASKINS. [SEAL.]
E. D. ROBINSON. [SEAL.]
THOS. J. HASKINS. [SEAL.]

Signed and sealed in presence of—
M. J. S. BLACKMAN.
M. BLACKMAN.

I, L. M. Blackman, a U. S. comm'r of the circuit court of the United States for the eastern district of Tennessee, do certify that the within-named obligors are known to me to be perfectly good and responsible for any cost that might accrue in said cause.

[SEAL.] L. M. BLACKMAN,
U. S. Com'r.

Cost.

Fees of special comm'r for taking depositions, fees of witnesses, and fees of marshal accrued

By reason of taking depositions	$94 80
Clerk's fees—making transcript	37 40
Total	$132 20

188 *Middle district of Tennessee.*

I, Lewis T. Baxter, clerk of the circuit court of the United States in and for said district, do hereby certify that the foregoing is a true, perfect, and complete transcript of the record and proceedings had in the cause in said court lately determined, wherein Calhoun and Opdyke, trustees, &c., were complainants, and The St. Louis and Southeastern Railway Company (Consolidated) et als. were defendants, so far as the same relates to the intervening petition therein filed by Sarah B. Haskins, widow of J. B. Haskins, deceased, as the same appears of record and on file in my office.

Witness my hand and the seal of said court at Nashville, in said district, this 9th day of October, A. D., 1879.

[SEAL.] LEWIS T. BAXTER, *Clk.*

(Indorsement on cover:) No. 325. Sarah B. Haskins, appellant, vs. The St. Louis & Southeastern Railway Company (Consolidated), & James H. Wilson, receiver of said company. M. Tennessee C. C. U. S. Filed 13th October, 1879.

REC. 325—5

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

SARAH B. HASKINS, APPELLANT,
vs.
THE ST. LOUIS & SOUTHEASTERN RAILWAY Company (consolidated) and James H. Wilson, receiver. } No. 15.

Writ of certiorari and return.—Filed September 17, 1883.

1 THE UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the judges of the circuit court of the United States for the middle district of Tennessee, greeting:

Whereas in a certain suit in said circuit court, between Philo C. Calhoun and George Opdyke, trustees, complainants, and the St. Louis & Southeastern Railway Company (consolidated), James H. Wilson, receiver, et al., defendants, and Sarah B. Haskins, intervening petitioner, which suit was removed to the Supreme Court of the United States by virtue of an appeal taken by Sarah B. Haskins, agreeably to the act of Congress in such case made and provided; a diminution of the record and proceedings of said cause,

You, therefore, are hereby commanded that, searching the record and proceedings in said cause, you certify what omissions you shall find
2 to the said Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness the honorable Morrison R. Waite, Chief Justice of said Supreme Court, the ninth day of November, A. D. 1882.

JAMES H. McKENNEY,
Clerk Supreme Court U. S.

3 CALHOUN AND OPDYCKE, TRUSTEES,
vs.
ST. L. AND S. E. R. R. CO., ET AL. (CONSOLIDATED).

In re. J. K. Haskins.

The defendant comes and excepts to the report of the special commissioner, and for cause of exception says, that under the law and the testimony the petitioner is not entitled to the relief sought, and that the report should be disallowed.

DEMOSS & MALONE, *Att'ys.*

(Endorsed:) Filed June 13th, 1879. Lewis T. Baxter, clerk, middle district of Tennessee.

I, Lewis T. Baxter, clerk of the circuit court of the United States for the district aforesaid, do hereby certify that the foregoing is a true, perfect, and complete copy of the exceptions filed by the defendants' attorneys to the commissioner's report, allowing Mrs. Sarah B. Haskins
4 $5,000.00, as the same appears of record and on file in my office.

This is in obedience to the writ of certiorari, issued to me from the Supreme Court of the United States under date of November 9th, 1882.

Witness my hand & seal of said court this 14th day of Sept., 1883.

[SEAL.] LEWIS T. BAXTER, *Clerk*,
By CHAS. NASH, *Dep'y Cl'k.*

(Endorsed:) Supreme Court U. S. 1883, October term. No. 15. Sarah B. Haskins, app't, vs. The St. Louis & Southeastern Railway Co. & al. Writ of certiorari and return. Filed Sept. 17, 1883.

109-106

OFFICE SUPREME COURT U. S.
FILED
OCT 27 1882
JAMES H. McKENNEY, Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1882.

SARAH B. HASKINS, APPELLANT,

vs.

THE ST. LOUIS & SOUTHEASTERN RAILROAD CO. (CONSOLIDATED) AND JAMES H. WILSON, RECEIVER.

BRIEF OF COUNSEL FOR APPELLANT.

C. R. & H. H. Hatch Printers, Nashville, Tenn.

I, Lewis T. Baxter, clerk of the circuit court of the United States for the district aforesaid, do hereby certify that the foregoing is a true, perfect, and complete copy of the exceptions filed by the defendants' attorneys to the commissioner's report, allowing Mrs. Sarah B. Haskins
4 $5,000.00, as the same appears of record and on file in my office.

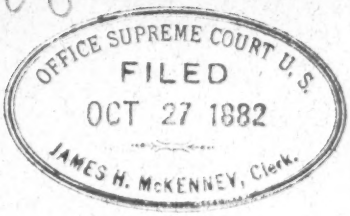
This is in obedience to the writ of certiorari, issued to me from the Supreme Court of the United States under date of November 9th, 1882

Witness my hand & seal of said court this 14th day of Sept., 1883.

[SEAL.] LEWIS T. BAXTER, *Clerk*,
By CHAS. NASH, *Dep'y Clk.*

(Endorsed:) Supreme Court U. S. 1883, October term. No. 15. Sarah B. Haskins, app't, vs. The St. Louis & Southeastern Railway Co. & al. Writ of certiorari and return. Filed Sept. 17, 1883.

109-106



SUPREME COURT OF THE UNITED STATES.

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vs.

THE ST. LOUIS & SOUTHEASTERN RAILROAD CO. (CONSOLIDATED) AND JAMES H. WILSON, RECEIVER.

BRIEF OF COUNSEL FOR APPELLANT.

C. R. & H. H. Hatch Printers, Nashville, Tenn.

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In October, 1874, suit was commenced in the Circuit Court of the United States at Nashville, Tenn., to foreclose a mortgage executed by the St. Louis & Southeastern Railroad Co. and to sell the mortgaged property. A sale of the property was decreed. Afterwards, in the same month, Alexander was appointed receiver and authorized by the Court to take the charge and management of the property. Alexander resigned and Wilson was appointed receiver in September, 1876, and continued to act as such until the property was sold. While Wilson was operating the road as receiver, I. K. Haskins was, for a few days, acting as freight conductor on one branch of the road that ran from Nashville, Tenn., to Earlington, Ky., a distance of 102 miles, and was killed on the 10th of October, 1878, while in the discharge of his duty. He left surviving a widow, and a son, two or three years old. In November, 1878, by order of the United States Circuit Court, entered on its minutes, the widow was permitted to bring suit in the State Court of Tennessee against the company and

receiver for damages for the killing, but the Circuit Judge afterwards ordered her to stop the State suit and to file her claim in the United States Circuit Court, which she did.

By act of the Tennessee Legislature, approved December 14, 1871, Chapter 78, the widow is authorized to bring such a suit as this for herself and children, without letters of administration, and under this act, and said order of court, she sued.

Proof was taken before the Court Commissioner, who reported that the widow and child were entitled to $5,000 damages. To this report the receiver's attorneys excepted. The exception was sustained, the widow's petition dismissed, and she has appealed to this Court.

The record fails to disclose any ground or reason for the action of the Circuit Court.

As I understand the law, the receiver, while operating this road, occupied towards his employes and the general public the same attitude, and assumed substantially the same liabilities as the railroad company did had it been operating the road. The earnings received, and the proceeds of the sale of the road, were chargeable with the losses and damages, such as are sued for here, and with the ordinary expenses of managing the road. The bondholders and mortgagees were only entitled to what remained after charges of this kind were paid. 93 U. S. R. 354; 104 U. S. R. 126.

Such was conceded to be the law in the trial below, and accordingly the Court allowed Jeff Hoskins, a colored man whose name appears in this record, $1,000 for damages sustained by him in being struck and injured by a train of cars, carelessly run by the receiver's employes, and he was paid. And, by general decree of the Court, the property, moneys and effects in the hands of the receiver, were made liable for the faults and negligences of his subordinates.

The only question now is, whether Haskins was killed under such circumstances as to entitle his widow and child to damages.

What is known as the St. Louis & Southeastern Railroad was built more than twenty years ago. At a point ten miles from Nashville and a mile and a half from Edgefield Junction, and within the limits of Tennessee, is a deep cut in this railroad track, and when the road was finished, the company built a bridge over the cut in order that the landowner might pass from his house to the turnpike road. After the bridge had stood there several years it was burned, and the company built another, some fourteen inches higher from the track than the burnt one. When rebuilt, a person standing erect on top of cars could pass safely under it. This was tested at the time of the rebuilding. How it was in that respect before rebuilt, does not distinctly appear in the record. The ties of the road, in the cut, were originally laid on solid rock, but gradually the road-bed had been raised six or eight inches by ballasting; the bridge timbers had sunk from overhead; so that, for seven or eight years at least before October 10, 1878, that bridge was so low that persons standing erect on top of the cars could not pass under it without being struck. Cars are ordinarily twelve feet high, and it was only 16 feet 9¼ inches between the track and the bridge timbers, thus leaving less than five feet between the top of the cars and the bridge timbers.

Before Haskins was killed, a brakeman of the company had been killed by that bridge; another employe had been knocked off by it and run over and both legs cut off. The President of the Company testified that he saw one brakeman seriously hurt by the bridge striking him. Various others had been more or less seriously hurt by it.

All these accidents were known to the railroad authorities. The President himself testified that he knew of them, and

knew they were caused by this bridge, and that he still left it standing there, and made no efforts to remove the evil. The bridge cost but a trifle; it was only ten feet wide and twenty feet long. A little attention, and a few dollars, would have obviated all the difficulty.

This road and bridge were in the hands of the Receiver four years before Haskins was killed, and yet, with a knowledge of the condition of the bridge and of these bloody accidents, the railroad authorities, with a reckless disregard of the lives of their employes, doggedly refused to apply the remedy. After Haskins was killed, the road-master wanted to take the bridge down, "because," as he said, "it was killing too many of their men"; but it was not done, and to the day of the trial of this cause it still stood there.

The proof shows that a man could not tell that the bridge was too low while on the engine, or on a flat car, or in the caboose. He had to be out on top of a car as it passed the bridge, to discover the fact.

One employee testified that he ran as baggage-master and brakeman for several months on this road, and still did not know the bridge was too low, and simply because he had not been notified of it, and had not heard of anyone being hurt while he was se running, and because he had not passed under the bridge while on top of the cars. It was not his duty to know the condition of the bridge. With these facts, if he had suddenly been called to duty while passing under the bridge, and had been injured by it, can there be any doubt of his right to recover? Another brakeman, Green, was notified of this dangerous bridge, and yet while passing it once in daylight he was struck by it on the back of the head and knocked senseless.

Railroad engines are generally built so as to bear from 250 to 300 pounds of steam pressure, while 160 pounds is sufficient to draw the heaviest trains. They are built that way

so as to allow a wide margin for inattentions, forgetfulness, and other casualities. If the engiineer knew that the engine would only bear 160 pounds, the amount required to draw trains, and that the moment it went over that an explosion would occur, he would be constantly carrying his life in his hands. The very dread would keep him in a tremor. and would, of itself, be almost certain to cause an explosion. The company cannot require an engineer to be thus in jeopardy and constantly on the lookout. He must be allowed a margin, so that if, by accident, the steam gets over 160, it will not cause an explosion. Nor has a railroad company the right to experiment with the lives of its employees, and build bridges either too low to pass under safely or too weak to bear the heavy trains. An employe is liable to be called suddenly in the fog and darkness of the night, to mount the top of the cars to put on brakes, or to perform other duty. He cannot see the bridge; he does not know where he is on the line of the road; is not aware of the nearness of one of these deadfalls, or if he knows in cooler moments that one is in that region, on the sudden call to duty he may not think, and cannot be expected to think, of the danger.

Haskins had only made one trip on this road before his engineer, Gory, began to run with him, and Gory had only run about three weeks. Gory and Haskins were new men on this road, and Gory says that he did not know, and had never heard of this bridge being too low till Haskins was killed. It seemed that no accident had occurred at this bridge after these two men went there. There had been a lull in the storm of accidents; but as soon as Haskins was killed, the stories of former disasters were revived, and Gory's ears were filled with them. Suppose his duties had suddenly called him to the top of his cab or on a car, and he had been struck by the bridge, can there be any doubt of his right to damages?

The proof shows that it is the custom of railroad compa-

nies to build bridges high enough to permit persons standing erect on cars to pass safely. The president testified that a bridge would not be properly built, if too low for that, and common sense teaches the same. It is customary to build bridges strong enough, and of good material enough, to hold the weight of trains, heavier than will pass over them, and to build engines that will bear heavier steam pressure than will be required to draw trains; but suppose there is a manifest defect in either—a defect known to the proper railroad authorities, or that might be known by the exercise of reasonable care, and that because of such defect an employe is injured without his fault, can he not recover for such injuries?

But custom cannot control this question. The law imposes duties on railroad companies that they cannot absolve themselves from by showing a custom. If they could, they would establish a custom to have everything cheap, and thus shirk liability.

The proof shows that Conductors have a right to presume, and do presume, that over-head bridges are high enough for employees to pass under them with absolute safety. Haskins had run on other roads a year or two, but on this road from Nashville to Earlington, he had run only about three weeks. This was all the railroading he had ever done, so far as the proof shows, and on all the lines of road where he operated, this was the only brdge that was too low, so far as the proof shows.

The caboose is the place where a freight conductor generally stays, but he goes anywhere on the train that his duties require, and if he hears the continual call of the engineer for brakes to be put on or off, it is his duty to go on top of the cars to see why the call is not obeyed by the brakemen. No one, before that morning had ever known Haskins to be on top of the cars as they passed that bridge, or as they left the Junc-

tion. No one had ever notified him of that bridge, nor had ever heard him speak of it. The morning was foggy. The smoke from the engine was trailing in large volumes back along the top of the cars. It was just at morning twilight. As the train was approaching that bridge, the engineer repeated ly called for the brakes to be let off. Haskins, in the line of his duty, went on top of the train to see that they were off, and was going back to the caboose, in utter ignorance of the bridge, and was struck in the back of the head and killed.

He was a sober, careful, cautious conductor. Would such a man have been hurt by that bridge, if he had known its con- dition? He is not here to speak for himself, and to tell the truth of this matter, but the circumstances speak for him, and are absolutely conclusive that he was in utter ignorance of the dangerous condition of that bridge. But under the law, if ho had known it, but had, in haste, been called upon to discharge a duty, he is not presumed to recollect the defect, and if he is enjured, he is not to be defeated in a recovery. Wharton on Neg. Section 219. Some body was to blame. Who was it? Where is the fault in Haskins' conduct? He died at his post, in the discharge of his duty, in ignorance of the danger while his master knew, or might, by reasonable care, have known of the danger. It was not Haskins' duty to know the condition of the bridge. It was not one of the risks that he impliedly assumed. The master should have warned him, either by word, or by some signal suspended across the track on each side of the bridge, or in some other way.

The Court will observe that after the Commissioner reported in favor of the widow's claim, the Receiver offered to file a statement that no report of the condition of the bridge had been made to him, nor did he have knowledge of it till after this accident. That comes too late, but even if it had been been made in time, in the shape of a deposition, it could not defeat this action. It was not necessary for him to have known it. If his bridge builder, or superintendent, or roadmaster,

could, by the exercise of reasonable care, have known it, that was sufficient to make him liable. And he does not say in that statement, that such servant did not know it, nor did he introduce as a witness, a single one of these servants to show that they did not know it. The law presumes from the length of time, that they did know it. It was their duty to know it. That the bridge was dangerous, the blood and bones of those employees testify.

Now, I wish to refer to some adjudged cases, and let the Court apply the facts and principles to those involved in this case at bar.

Ill. Central Railroad vs. Welsh. 52 Ill. 183.

Welch was a brakeman on this road. At Mendota the track is about eighteen inches from the edge of the awning which projects from the station-house, so that, when a freight car stands on the track, the inside edge of the car is about even with the outer edge of the awning. The awning was about eighteen inches higher than the top of the car. The train was coming into the depot about as fast as a man could walk, and Welch was walking along by the side of it in order to cut off a portion of it. There was a ladder on each side of the car. The engineer signaled for brakes, and Welch ran up the ladder on the side next to the station-house, and before he reached the roof of the car he was struck by the projecting awning and knocked from the car, and his arm so broken that it had to be amputated.

The attention of the division superintendent and division engineer had been called, sometime before, to the dangerous position of this awning. When the engineer called for brakes it was Welch's duty to mount the car for the purpose of applying them.

Welch had been on the road two months, but had always passed that station in the night, except on two trips.

The Court said there were many freight depots and station-houses upon the line of the road, and it would be preposterous for the Court to say, or to ask a jury to say, that a brakeman engaging in the service of the company, must be held to know whether or not there may be one among them whose roof or awning so projects over the line of road that a brakeman on a freight train, in the performance of his duties, would be liable to be swept from the train by collision with it.

The Court further said that it "had held in Chicago & Northwestern Railroad Co. vs. Swett, 45 Ill. 201, that the corporation is bound to furnish to its servants safe materials and structures, and must, in the first instance, properly construct its road with all its necessary appurtenances. When the appellent entered the service of this company he had the right to presume that it had, in this respect, discharged its obligations.

"There is no reason for supposing that Welch had acquired such knowledge before the accident, as he had been but two months upon the road, and had always passed this station in the night, except on two trips.

"Morever, it is to be remarked that the danger was of such a character that it might well escape the observation of a person who had been even for a long time upon the road." 52 Ill. 186.

In schooner "Norway" vs. Jensen, 52 Ill. 373, it appeared that Jensen had been employed as a sailor upon the vessel and was injured by the falling of a block, connected with the "fish tackle," upon him.

The Court said that the owners of the vessel, like a railroad corporation, are constructively present at all times, in the persons of their agents, and are held liable, in all courts, for their negligence; etc. "It is well settled a master is responsible to

his servant for injuries received by him from defects in the structures and machinery about which the services were rendered, which defects the master knew, or ought to have known," citing 45 Ill. 197.

In Railroad Co vs. Gregory, 58 Ill. 272, it appeared that Bennett, plaintiff's intestate, was a fireman on the defendant's locomotive. It was his duty to look out for signals, on approaching stations, and this he did, sometimes by looking out at the front window and sometimes at the side window or gangway. As the locomotive was approaching Cliola Station, in the night, the fireman looked out for signals and was struck by a mail catcher and instantly killed. This is a post placed generally seven feet from the track, and from that post an arm extends to within three and one-half feet of the rail and to within from seven to ten inches of the sides of the coaches as they pass. The mail bag is suspended from this arm, so that the railroad train may receive the mail while running at full speed.

The proof showed that these mail-catchers are not ordinarily dangerous to the servants of the railroad trains.

Two men had been injured, one seriously and the other slightly, by this catcher prior to Bennett's death.

Immediately after Bennett's death the mail-catcher at Cliola was moved back a distance of from four to six inches, and no injury has occurred from it since.

The Court said that it was the duty of the agents of the Railroad Company to see that these catchers were placed such a distance from the track as would render them entirely safe to the operators of the road; that the agents charged with that duty had no possible connection with the running of the trains, in which service Bennett was engaged; that their duties were as different and distinct as those of a conductor and a track repairer; that the Court could not regard the injury

complained of as having been occasioned by the negligence of any servant of the company in the same line of employment with Bennett; that the service was separate and distinct. The Court further said: "The officers of the company were notified of the injuries to their employes at the date of their occurrence, and it is not an illogical conclusion that the company was guilty of gross negligence in not removing it to a safe distance at an earlier period. . . . . The slightest precaution on the part of the officers of the company, after their attention had been called to its dangerous tendencies, would have prevented the occurrence of the fatal accident." . . . .

"If it be conceded that Bennett was guilty of negligence in leaning out from the gang-way or the side-window, his negligence in that regard was slight in comparison with that of the company, in permitting the mail-catcher to stand so near the track, after notice had been given to the railroad operatives. Railway companies have no right to erect machines, for any purpose, so near the track, that the slightest indiscretion on the part of the employes will prove fatal. It is culpable negligence to do so. . . . "His (Bennett's) duty required him to discover signals, if any were given, when approaching Cliola station, and it could hardly be expected of him, when in the performance of that duty to his employer, that his mind would be on that structure that stood in direct proximity to the track, when hidden from view by the darkness of the night." . . "It does not militate against this view of the case that the deceased had knowledge that these structures were placed at the side of the track all along the line of the road, when he entered upon the service of the company. So far as it is shown that he had any knowledge upon that subject, it is, that they were entirely safe, and it does not appear that he knew, or had any reason to believe, that the one at Cliola station was more dangerous than the others." . . It is in proof that the mail-catcher could have been seen as far as

any other obstruction in the daylight, and had it been light enough to see, that fact would have imposed a higher degree of care upon the deceased to have prevented the collision."

Upon the whole case, the court held the company liable, and that it was negligence to place the catcher so near the track in the first instance, and gross negligence not to remove it, after knowledge of the accident it had occasioned, and that Bennett was not guilty of any negligence; that it could not reasonably be expected of him to have his mind on that catcher under the circumstances.

In the case of Railroad vs. Russell, admr., 91 Illinois. 298, it appeared that on the 1st of June. 1875, Russell commenced working for the railroad company as brakeman on one of its freight trains running from Aurora to Forreston and return, and continued so to work till he was killed on the 2nd of November. 1875. A telegraph pole had been standing only 18 inches from the passing cars since 1872, but there was no proof that the Railroad company, or its agents, had put the pole there, or that the company had any knowledge or notice thereof.

Russell was climbing down the ladder of the car to throw a switch, and was struck by this pole and knocked between the cars on the track, run over and almost instantly killed. There was a verdict and judgment for the plaintiff, and the judgment was affirmed by the Supreme Court, on appeal.

The Railroad company insisted that Russell had violated the conductor's order, and that he was negligent in not looking and seeing the pole in time to save himself.

The Court will notice that the deceased had run on this part of the road as brakeman on a freight train for five months. His calling kept him most of the time on top of the cars.

Now, with these facts, the Court held,

First.—That it was culpable negligence in the railroad company to permit, for so long a time, such an obstruction to be in such close proximity to its track.

Second. That if was not essential to the liability of the Railroad company, in case of injury resulting from such obstruction, that it should itself have placed the telegraph pole where it was. It was enough that the company should have suffered it to be and remain in such dangerous proximity to the track.

Third. That from the length of time of the telegraph pole standing where it did, the jury were warranted in finding that the company knew of it—that they ought to have known of it, and so might be considered as having notice.

Fourth. That, under the circumstances, the brakeman, in abandoning the safe side of the track, and going over the car to the obstructed side, was not guilty of such contributory negligence as would preclude a recovery against the company.

Fifth. The Conductor had given express instructions to brakemen "not to get on or off the work side of cars, or get down, or climb up while they were moving,—that is, round elevators, stock yards, and so on." In this case it was not regarded that the brakeman violated this order, as there was no impediment between him and the telegraph pole, when he attempted to get down.

Sixth. That the brakeman was not chargeable with negligence in not looking and seeing the pole in time to save himself; that there was no evidence that he knew any thing of the pole; and his eyes, it may be supposed, were directed to the side of the car while he was in the act of getting down.

Seventh. Just before the accident, deceased was seen to have hold of the round of the ladder above the roof of the car; his feet were on the first round of the ladder on the side of the car, the rounds being about a foot apart; that position extended his body backward from the line he would have occupied, if he had stood upright; it was claimed that in thus carelessly extending his body backward he incurred the danger of the collision. The evidence upon that point was that men differ in their manner of getting off a car; some do as deceased did; others sit down on the side of the car, and throw themselves over on the ladder. Here there was no such negligence on the part of the brakeman as to the mode of descending the car as should effect the right of recovery.

In Lewis vs. R. R , 59 Mo., 495, plaintiffs, intestate, Mann, was a brakeman, and was walking along the track about daylight, in order to couple some cars, and his foot fell into a hole, which caused him to fall and in falling his foot was caught by the wheel of the car and crushed. The hole had been dug by steamboatmen, three or four days before, for the purpose of placing posts in it to tie their boats at the landing. The plaintiff testified that he did not know of the hole till he fell into it, though the proof showed he had walked around there every day since the hole had been dug. Another brakeman had seen the hole two or three days before the accident, and complained of it to the section foreman. Upon these facts, the Court announced the law as follows:

1. The rule has long been established, and it is founded in reason and justice, that it is the duty of railroad companies to keep their road and works, and all portions of the track in such repair, and so watched and tended, as to insure the safety of all who may lawfully be upon them, whether passengers or servants, or others. They are bound to furnish a safe road and sufficient and safe machinery and cars. The legal implication is that the roads will have and keep a safe track, and adopt suitable instruments and means with which to carry

on their business, and if they fail to do so they are liable for the consequences.

2. Railroad companies are liable for all defects of which they have knowledge, or which, by the use of reasonable care and diligence, they might have known.

3. Where the servant of a railroad company is injured by defects in the machinery or track, the latter cannot defend on the plea that such defects resulted from the negligence of fellowservants. The agents of the road charged with the duty of supplying a safe track and sound machinery are not properly fellow servants, but represent the corporation itself. And mere knowledge of defects on the part of one injured, without additional testimony showing negligence, will not defeat his recovery. . . . The liability of the company rests on the implied obligation of its contract with its employes to use due care touching the condition of its roadbed and apparatus.

In Flike vs. R. R. company, 53 N. Y., 549, the plaintiff knew there was a deficiency of brakemen, and in Snow vs. R. R. company, 8 Allen, 441, the plaintiff was well aware that the hole which caused the injury existed; yet, in both cases, the Court held that a recovery was proper on the ground that it was the duty of the companies to furnish the necessary number of hands, and to keep the track safe and in good order, and that a failure to do either was a violation of their contract with their servants or employes.

An eminent author sums up the duty of railroad companies as follows:

"It is their duty to keep their works and all portions of their track in such repair, and so watched and tended as to insure the safety of all who may lawfully be upon them, whether passengers, or servants, or others. They are bound to furnish a safe road, and sufficient and safe machinery and

cars. The implication is that they will have and keep a safe track and adopt suitable instruments and means with which to carry on their business. They can provide all this by the use of the requisite care and foresight; and, if they fail to do so, they are guilty of a breach of duty and are liable for the consequences." 2 Thompson on Negligence, p. 985.

And this Court, in Hough vs. Railroad Co., 100 U. S. R. 217, says that railroad companies must provide their servants with machinery and other instrumentalities adequately safe for use by the latter. And if the master knows, or, in the exercise of due care might have known that his *structures* or engines were insufficient, either at the time of procuring them or any subsequent time, he fails in his duty.

Negligence of the master in this regard is not a hazard usually or necessarily attendant upon the business, nor is it one which the servant, in legal contemplation, is presumed to risk, for the obvious reason that the servant, who is to use the instrumentalities provided by the master, has, ordinarily, no connection with their purchase (or construction) in the first instance, nor with their preservation or maintenance in suitable condition after they have been supplied by the master. Ibid, 217.

The railroad company must provide and maintain safe, sound and suitable machinery, *roadway structures* and instrumentalities. And it must not expose its employes to risks beyond those which are incident to the employment, and the employe has a right to presume that the company has discharged these duties. O'Connell's case, 20 Md., 212.

The Supreme Court of Tennessee holds that a railroad company is bound to see that the road is in good order and safe, and that the engines, etc., are perfect and properly constructed; and if an injury is occasioned to an employe by any imperfections in the road or machinery, the company would be liable. 1 Caldwell 613; 9 Heisk. 27.

And this is cited approvingly by Justice Harlan in a note to the Hough case above quoted. 1 Redfield on Railways, p. 520.

But the master does not discharge his duty by providing proper and safe machinery, structures and appliances, in the first instance, and then remaining passive. "It is a duty to be affirmatively and positively fulfilled and performed." He must supervise, examine and test his instrumentalities and structures as often as prudence and experience may require. 2 Thompson on Negligence, p. 984.

It is not necessary to show that the master, or his proper servant, knew of the defect or danger of his instrumentalities and structures.

The question is not simply what facts the master actually knew, but of what facts might he have obtained knowledge had he sought it from the natural sources of information which were at his command. Judge Bruce in Taylor vs. S. & N. R. R. Co. and L. & N. R. R. Co. in U. S. Circuit Court for the Middle District of Alabama.

"The means of knowledge are the same thing in effect as knowledge itself." Justice Swayne in Wood vs. Carpenter, 101 U. S. R. 143.

If, as the law has well settled, a railroad company is bound to have a safe road and roadway structures and instrumentalities; if it is bound to have the roadway free from holes, free from telegraph poles, mail-catchers and awnings; if it is bound to have a bridge safe for trains, and train hands to run over, and to have safe and properly built engines; if dangers and defects in these regards are not such as an employe impliedly undertakes; if this over-head bridge was not safe, was not constructed as railroad bridges generally are, and if this bridge, so

defective and dangerous, caused Haskins' death, without his fault, upon what principle can it be insisted that the widow cannot recover damages for his death? Why is not a railroad company as much bound in law to have safe *super*-structures as safe *sub*-structures? What is the difference? Each is a structure, each an instrumentality necessary, for the operations of the company.

It has been held, I know, in two or three cases where employes have been injured by over-head bridges, that the Railroad company was not liable, but in each case, the decision was based upon the fact that the party injured had knowledge of the height of the bridge and of its danger, and with that knowledge, voluntarily incurred the risk. These decisions do not militate with the doctrine contended for in this brief.

In the case of Devitt vs. R. R. Company, 50 Mo., 302, it appeared that Devitt was a brakeman on a freight train, and was injured by the overhead timbers of a bridge because they were so low as to strike his head while passing. He had been cautioned against this bridge and told to look out for it. He was fully aware of its danger, and just before reaching the bridge he was sitting on his brake, facing it. He seemed, said the court, to be trying the hazardous experiment of sitting upon the brake to see whether he could stoop sufficiently to clear the timber. The court said that it seemed the deceased committed suicide, and on these facts decided that the administrator could not recover, but held in substance that the bridge was wrongfully built at that height, and that under other circumstances the company would be liable for injuries resulting to its servants because of its height.

So with the R. R. Company vs. Stricker, 51 Md., 47.

If the court should be of opinion that under the law and facts the appellant is entitled to recover, I suppose the practice would be to disallow the exceptions to the commissioner's report, and to confirm it without further proof.

The record shows that freight conductors were getting, at the time of this accident, from $75 to $90 per month.

F. E. Williams
atty. for appellant